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Monday
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Briefing on How To Use the Federal Register
For information on a briefing in Atlanta, GA, see announcement on the inside cover of this issue.

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FOR: Any person who uses the Federal Register and Code of Federal Regulations.

WHO: The Office of the Federal Register.

WHAT: Free public briefings (approximately 3 hours) to present:

1. The regulatory process, with a focus on the Federal Register system and the public's role in the development of regulations.
2. The relationship between the Federal Register and Code of Federal Regulations.
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4. An introduction to the finding aids of the FR/CFR system.

WHY: To provide the public with access to information necessary to research Federal agency regulations which directly affect them. There will be no discussion of specific agency regulations.

ATLANTA, GA

WHEN: January 11, at 9:00 a.m.
WHERE: Centers for Disease Control
1600 Clifton Rd., NE.
Auditorium A
Atlanta, GA (Parking available)
RESERVATIONS: 1–800–347–1997.

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FEDERAL LABOR RELATIONS AUTHORITY

5 CFR Chapter XIV, Appendix A

Regional Offices; Jurisdictional Changes; Address and Telephone Changes; Facsimile Numbers

AGENCY: Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority.

ACTION: Amendment of rules and regulations.

SUMMARY: This document revises appendix A, paragraphs (a), (b), (c), (d) and (f) of the rules and regulations of the Federal Labor Relations Authority and the General Counsel of the Federal Labor Relations Authority published at 5 CFR part 2400 *et seq.* (1990) to provide for: (1) A change in designation of the New York and Los Angeles Regional Offices to Sub-Regional Offices; (2) changes in the geographic jurisdictions of the Boston and San Francisco Regional Offices; (3) changes in the addresses and telephone numbers of certain Offices; and (4) the publication of the facsimile numbers of the Authority, General Counsel, Chief Administrative Law Judge and Regional and Sub-Regional Offices.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Michael Doheny, Deputy General Counsel, Federal Labor Relations Authority, 500 C Street SW., Washington, DC 20424, Telephone: (202) 382-0842.

SUPPLEMENTARY INFORMATION: Effective January 28, 1980, the Authority and the General Counsel published at 45 FR 3482, January 17, 1980, final rules and regulations to govern the processing of cases by the Authority and the General Counsel under chapter 71 of title 5 of the United States Code. These rules and regulations are required by title VII of the Civil Service Reform Act of 1978 and are set forth in 5 CFR part 2400 *et seq.* (1990).

Appendix A, paragraph (d) lists the Regional Offices of the Authority. This amendment announces the change in designation of the New York and Los Angeles Regional Offices to Sub-Regional Offices. Upon a careful review of costs and operating efficiencies, we have concluded that the transaction of Authority business will be enhanced by designating the New York Regional Office as a Sub-Regional Office within the Boston Region and by designating the Los Angeles Regional Office as a Sub-Regional Office within the San Francisco Regional Office. The Philadelphia Sub-Regional Office, currently under the jurisdiction of the New York Regional Office, also will become part of the Boston Regional Office.

Appendix A, paragraph (f) of the rules and regulations sets forth the geographic jurisdictions of the Regional Offices of the Authority. This amendment also announces the transfer of the geographic jurisdiction of the current New York Regional Office to the Boston Regional Office and the transfer of the current geographic jurisdiction of the Los Angeles Regional Office to the San Francisco Regional Office. Parties may continue to file unfair labor practice charges and representation petitions with the newly designated New York and Los Angeles Sub-Regional Offices and the Philadelphia Sub-Regional Office.

Appendix A, paragraph (d) of the rules and regulations also sets forth the addresses and telephone numbers of the Regional and Sub-Regional Offices. This amendment announces changes in the addresses of the Atlanta and Denver Regional Offices and in the telephone numbers of the San Francisco Regional Office and the Los Angeles Sub-Regional Office. The mailing addresses, locations and telephone numbers of all Regional and Sub-Regional Offices are republished for the convenience of the public.

Appendix A, paragraphs (a), (b) and (c) sets forth the addresses of the Authority, the General Counsel and the Chief Administrative Law Judge. This amendment announces a change in the Authority's telephone number. This amendment also announces facsimile numbers for these offices, as well as for the Regional and Sub-Regional Offices in paragraph (f). Unfair labor practice charges, representation petitions, and other documents required by the rules and regulations to be filed with the Authority, Chief Administrative Law Judge, General Counsel or Regional Directors with an original signature may not be filed by facsimile transmission.

E.O. 11291, Federal Regulation

We have determined that this is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulations.

Regulatory Flexibility Act

We certify that these regulations will not have a significant economic impact on a substantial number of small entities because they affect only Federal agencies and employees.

List of Subjects in 5 CFR Chapter XIV, Appendix A

Administrative practice and procedure, Government employees, Labor-management relations.

Accordingly, under the authority of 5 U.S.C. 7134, the Federal Labor Relations Authority and the General Counsel revise appendix A to 5 CFR chapter XIV to read as follows:

Appendix A to 5 CFR Chapter XIV—Current Addresses and Geographic Jurisdictions

(a) The Office address, telephone and facsimile numbers of the Authority are: 500 C Street, SW., Washington, DC 20424; Telephone: FTS 382-0748 or Commercial (202) 382-0748; Fax: FTS 382-0729 or Commercial (202) 382-0729.

(b) The Office address, telephone and facsimile numbers of the General Counsel are: 500 C Street SW., Washington, DC 20424; Telephone: FTS 382-0742 or Commercial (202) 382-0742; Fax: FTS 382-0957 or Commercial (202) 382-0957.

(c) The Office address, telephone and facsimile numbers of the Chief Administrative Law Judge are: 500 C Street SW., Washington, DC 20424; Telephone: FTS 382-0851 or Commercial (202) 382-0851; Fax: FTS 382-0729 or Commercial (202) 382-0729.

(d) The Office addresses, telephone and facsimile numbers of the Regional Offices of the Authority are as follows:

(1) Boston Regional Office—10 Causeway Street, Room 1017A, Boston, Massachusetts 02222-1046; Telephone: FTS 835-7280 or Commercial (617) 565-7280; Fax: FTS 835-5538 or Commercial (617) 565-5538.

(i) New York, New York Sub-Regional Office—26 Federal Plaza, Room 3700, New York, New York 10278; Telephone: FTS 264-

4934 or Commercial (212) 264–4934; Fax: FTS 264–8038 or Commercial (212) 264–8038.

(ii) Philadelphia, Pennsylvania Sub-Regional Office—105 South 7th Street, 5th Floor, Philadelphia, Pennsylvania 19106; Telephone: FTS 597–1527 or Commercial (215) 597–1527; Fax: FTS 597–3565 or Commercial (215) 597–3565.

(2) Washington, DC Regional Office—1111 18th Street NW., 7th Floor, P.O. Box 33758, Washington, DC 20033–0758; Telephone: FTS 653–8500 or Commercial (202) 653–8500; Fax: FTS 653–5091 or Commercial (202) 653–5091.

(3) Atlanta Regional Office—1371 Peachtree Street NE., Suite 122, Atlanta, Georgia 30367; Telephone: FTS 257–2324 or Commercial (404) 347–2324; Fax: FTS 257–1032 or Commercial (404) 347–1032.

(4) Chicago Regional Office—175 West Jackson Boulevard, Suite 1359–A, Chicago, Illinois 60604; Telephone: FTS 886–3468 or Commercial (312) 353–6306; Fax: FTS 886–5977 or Commercial (312) 886–5977.

(i) Cleveland, Ohio Sub-Regional Office—One Cleveland Center, Suite 850, 1375 East 9th Street, Cleveland, Ohio 44114; Telephone: FTS 942–2114 or Commercial (216) 522–2114; Fax: FTS 942–7950 or Commercial (216) 522–7950.

(5) Dallas Regional Office—Federal Office Building, 525 Griffin Street, Suite 926, LB 107, Dallas, Texas 75202–1906; Telephone: FTS 729–4996 or Commercial (214) 767–4996; Fax: FTS 729–0156 or Commercial (214) 767–0156.

(6) Denver Regional Office—1244 Speer Boulevard, Suite 100, Denver, Colorado 80204; Telephone: FTS 564–5224 or Commercial (303) 844–5224; Fax: FTS 564–5227 or Commercial (303) 844–5227.

(7) San Francisco Regional Office—901 Market Street, Suite 220, San Francisco, California 94103; Telephone: FTS 484–4000 or Commercial (415) 744–4000; Fax: FTS 484–4117 or Commercial (415) 744–4117.

(i) Los Angeles Sub-Regional Office—350 South Figueroa Street, Suite 370, Los Angeles, California 90071; Telephone: FTS 798–3805 or Commercial (213) 894–3805; Fax: FTS 798–6202 or Commercial (213) 894–6202.

(e) The Office address and telephone number of the Federal Service Impasses Panel are: 500 C Street SW., Washington, DC 20424; Telephone: FTS 382–0981 or Commercial (202) 382–0981.

(f) The geographic jurisdictions of the Regional Directors of the Authority are as follows:

State or other locality	Regional office
Alabama	Atlanta.
Alaska	San Francisco.
Arizona	San Francisco.
Arkansas	Dallas.
California	San Francisco.
Colorado	Denver.
Connecticut	Boston.
Delaware	Boston.
District of Columbia	Washington, DC.
Florida	Atlanta.
Georgia	Atlanta.
Hawaii and all land and water areas west of the continents of North and South America (except coastal islands) to long. 90° E.	San Francisco.
Idaho	San Francisco.
Illinois	Chicago.
Indiana	Chicago.
Iowa	Denver.
Kansas	Denver.
Kentucky	Atlanta.
Louisiana	Dallas.
Maine	Boston.
Maryland	Washington, DC.
Massachusetts	Boston.
Michigan	Chicago.
Minnesota	Chicago.
Mississippi	Atlanta.
Missouri	Denver.
Montana	Denver.
Nebraska	Denver.
Nevada	San Francisco.
New Hampshire	Boston.
New Jersey	Boston.
New Mexico	Dallas.
New York	Boston.
North Carolina	Atlanta.
North Dakota	Denver.
Ohio	Chicago.
Oklahoma	Dallas.
Oregon	San Francisco.
Pennsylvania	Boston.
Puerto Rico	Boston.
Rhode Island	Boston.
South Carolina	Atlanta.
South Dakota	Denver.
Tennessee	Atlanta.
Texas	Dallas.
Utah	Denver.
Vermont	Boston.
Virginia	Washington, DC.
Washington	San Francisco.
West Virginia	Washington, DC.
Wisconsin	Chicago.
Wyoming	Denver.
Virgin Islands	Boston.
Panama/Limited FLRA jurisdiction.	Dallas.
All land and water areas east of the continents of North and South America to long. 90° E., except the Virgin Islands, Panama (limited FLRA jurisdiction), Puerto Rico and coastal islands.	Boston.

Dated: December 19, 1990.

For the Authority,

Solly Thomas,

Executive Director.

For the General Counsel,

Michael Doheny,

Deputy General Counsel.

[FR Doc. 90–30062 Filed 12–21–90; 8:45 am]

BILLING CODE 6727–01–M

DEPARTMENT OF AGRICULTURE

Agricultural Marketing Service

7 CFR Part 907

[Navel Orange Regulation 720, Amdt. 3]

Navel Oranges Grown in Arizona and Designated Part of California; Weekly Levels of Volume Regulations for the 1990–91 Season

AGENCY: Agricultural Marketing Service, USDA.

ACTION: Final rule.

SUMMARY: This final rule amends Navel Orange Regulation 720 (55 FR 50157) by revising the percentage allocation between districts regulated under the marketing order for California order for California-Arizona navel oranges during the period from December 21 through December 27, 1990. Consistent with program objectives, such action is needed to maintain orderly marketing conditions for fresh California-Arizona navel oranges and to enhance producer returns. This action was recommended by the Navel Orange Administrative Committee (Committee) which locally administers the marketing order covering navel oranges grown in Arizona and a designated part of California.

EFFECTIVE DATE: Regulation 720, Amendment 3, (7 CFR part 907) is effective for the period from December 21 through December 27, 1990.

FOR FURTHER INFORMATION CONTACT: Patricia A. Petrella, Marketing Specialist, Marketing Order Administration Branch, F&V, AMS, USDA, room 2524–S, P.O. Box 96456, Washington, DC 20090–6456; telephone: (202) 447–8139.

SUPPLEMENTARY INFORMATION: This amendment is issued under Marketing Order No. 907 (7 CFR part 907), as amended, regulating the handling of navel oranges grown in Arizona and a designated part of California, hereinafter referred to as the "order." The order is effective under the Agricultural Marketing Agreement Act of 1937, as amended, [7 U.S.C. 601–674], hereinafter referred to as the "Act."

This final rule has been reviewed by the U.S. Department of Agriculture (Department) in accordance with Departmental Regulation 1512–1 and the criteria contained in Executive Order 12291 and has been determined to be a "non-major" rule.

Pursuant to requirements set forth in the Regulatory Flexibility Act (RFA), the Administrator of the Agricultural Marketing Service (AMS) has

considered the economic impact of this action on small entities.

The purpose of the RFA is to fit regulatory actions to the scale of business subject to such actions in order that small businesses will not be unduly or disproportionately burdened. Marketing orders issued pursuant to the Act, and rules issued thereunder, are unique in that they are brought about through group action of essentially small entities acting on their own behalf. Thus, both statutes have small entity orientation and compatibility.

There are approximately 130 handlers of navel oranges who are subject to regulation under the marketing order and approximately 4,070 producers in the regulated area. Small agricultural producers have been defined by the Small Business Administration (SBA) [13 CFR 121.601] as those having annual receipts of less than $500,000, and small agricultural service firms are defined as those whose annual receipts are less than $3,500,000. The majority of producers and handlers of California-Arizona navel oranges may be classified as small entities.

The declaration of policy in the Act includes a provision concerning establishing and maintaining such orderly marketing conditions as will provide, in the interest of producers and consumers, an orderly flow of the supply of a commodity throughout the normal marketing season to avoid unreasonable fluctuations in supplies and prices. Limiting the quantity of California-Arizona navel oranges that each handler may handle on a weekly basis is expected to contribute to the Act's objectives of orderly marketing and improving producers' returns.

The Committee met publicly on December 18, 1990, in Newhall, California, to consider the current and prospective conditions of supply and demand and recommended, with six members voting in favor, four opposing, and one abstaining, an amendment to Navel Orange Regulation 720 (55 FR 50157) which will revise the percentage allocation between districts for the week ending on December 27, 1990. The Committee recommended an allotment of 900,000 cartons (100 percent) for District 1 and open movement for all other Districts for that week. The marketing information and data provided to the Committee and used in its deliberations was compiled by the Committee's staff or presented by Committee members at the meeting. This information included, but was not limited to, price data for the previous week from Department market news reports and other sources, preceding week's shipments and shipments to date, crop conditions, and weather and transportation conditions.

At the meeting, two Committee members reported that current demand for navel oranges ranged from good to excellent, while one Committee member commented that demand was declining as normal for the short Chrismas week. Committee members discussed the pros and cons of implementing volume regulation at this time. Six Committee members favored the scheduled 900,000 carton allotment level as contained in Navel Regulation 720; four members opposed, favoring a higher allotment level or open movement.

The Department reviewed the Committee's recommendation in light of the Committee's projections as set forth in its 1990–91 marketing policy and as previously established in Navel Orange Regulation 720. The recommended amount of 900,000 cartons is the same as that specified for all districts in Navel Orange Regulation 720. The Committee recommended open movement for District 3 since the Committee expects that District 3 will have shipped approximately 75 percent of its crop by the end of the week. The Committee also recommended that District 4 remain unregulated for the remainder of the season. Handlers in District 2 are not regulated as they are not shipping a sufficient quantity of navel oranges to warrant volume regulation at this point in the season.

During the week ending on December 13, 1990, shipments of navel oranges to fresh domestic markets, including Canada, totaled 2,252,000 cartons compared with 2,290,000 cartons shipped during the week ending on December 14, 1989. Export shipments totaled 220,000 cartons compared with 195,000 cartons shipped during the week ending on December 14, 1989. Processing and other uses accounted for 489,000 cartons compared with 486,000 cartons shipped during the week ending on December 14, 1989.

Fresh domestic shipments to date this season total 9,524,000 cartons compared with 11,007,000 cartons shipped by this time last season. Export shipments total 1,036,000 cartons compared with 1,393,000 cartons shipped by this time last season. Processing and other use shipments total 2,014,000 cartons compared with 2,670,000 cartons shipped by this time last season.

For the week ending on December 13, 1990, regulated shipments of navel oranges to fresh domestic markets were 2,185,000 cartons on an adjusted allotment of 1,981,000 cartons which resulted in net overshipments of 204,000 cartons. Regulated shipments for the current week (December 14 through December 20, 1990), are estimated at 1,945,000 cartons on an adjusted allotment of 1,715,000 cartons. Thus, overshipments of 230,000 cartons could be carried forward into the week ending on December 27, 1990.

The average f.o.b. shipping point price for the week ending on December 13, 1990, was $8.58 per carton based on a reported sales volume of 1,454,000 cartons compared with last week's average of $8.73 per carton on a reported sales volume of 1,369,000 cartons. The season average f.o.b. shipping point price to date is $9.24 per carton. The average f.o.b. shipping point prices for the week ending on December 14, 1989, was $7.69 per carton; the season average f.o.b. shipping point price at this time last year was $8.10.

The Department's Market News Service reported that, as of December 18, demand for California-Arizona navel oranges was good and the market was steady for all grades and sizes.

According to the National Agricultural Statistics Service, the 1989–80 season average fresh equivalent on-tree price for California-Arizona navel oranges was $4.05 per carton, 64 percent of the season average parity equivalent price of $6.34 per carton.

Based upon fresh utilization levels indicated by the Committee and an econometric model developed by the Department, the 1990–91 season average fresh on-tree price is estimated at $4.33 per carton, about 66 percent of the estimated fresh on-tree parity equivalent price of $6.56 per carton. It is currently estimated that there is a less than one percent probability that the 1990–91 season average fresh on-tree price will exceed the projected season average fresh on-tree parity equivalent price.

Limiting the quantity of navel oranges that may be shipped during the period from December 21 through December 27, 1990, to 900,000 cartons would be consistent with the provisions of the marketing order by tending to establish and maintain, in the interest of producers and consumers, an orderly flow of navel oranges to market.

Based on considerations of supply and market conditions, and the evaluation of alternatives to the implementation of this volume regulation, the Administrator of the AMS has determined that this final rule will not have a significant economic impact on a substantial number of small entities and that this action will tend to effectuate the declared policy of the Act.

A proposed rule regarding the implementation of volume regulation and a proposed shipping schedule for California-Arizona navel oranges for the

1990–91 season was published in the September 6, 1990, issue of the **Federal Register** (55 FR 36653). That rule provided interested persons the opportunity to comment until October 9, 1990, on the need for regulation during the 1990–91 season, the proposed shipping schedule, and other factors relevant to the implementation of such regulations. A final rule concerning this action was published in the **Federal Register** on December 5, 1990, (55 FR 50157), implementing the shipping schedule, as revised, for the season. Amendments may be warranted to that final rule throughout the season based on analysis of the prevailing marketing conditions and available data.

Accordingly, this final rule amends Navel Orange Regulation 720 (55 FR 50157) by revising the percentage allocation between districts regulated under the marketing order for California-Arizona navel oranges during the period from December 21 through December 27, 1990.

Moreover, pursuant to 5 U.S.C. 553, it is found and determined that it is impracticable, unnecessary, and contrary to the public interest to give preliminary notice on this action, engage in further public procedure with respect to this amendment and that good cause exists for not postponing the effective date of this action until 30 days after publication in the **Federal Register**. This is because there is insufficient time between the date when information became available upon which this regulation is based and the effective date necessary to effectuate the declared policy of the Act.

In addition, market information needed for the formulation of the basis for this action was not available until December 18, 1990, and this action needs to be effective for the regulatory week which begins on December 21, 1990. Further, interested persons were given an opportunity to submit information and views on the regulation at an open meeting, and handlers were apprised of its provisions and effective time. It is necessary, therefore, in order to effectuate the declared purposes of the Act, to make this regulatory provision effective as specified.

List of Subjects in 7 CFR Part 907

Marketing agreements, Oranges, Reporting and recordkeeping requirements.

For the reasons set forth in the preamble, 7 CFR part 907 is amended as follows:

1. The authority citation for 7 CFR part 907 continues to read as follows:

Authority: Secs. 1–19, 48 Stat. 31, as amended; 7 U.S.C. 601–674.

Note: This section will not appear in the Code of Federal Regulations.

2. Section 907.1020 is amended by republishing the introductory text and revising paragraph (c) to read as follows:

§ 907.1020 Navel Orange Regulation 720, Amendment 3.

The shipping schedule below establishes the quantities of navel oranges grown in California and Arizona, by district, which may be handled during the specified weeks as follows:

Week ending	District 1	District 2	District 3	District 4	Total
	Cartons/percent (000)	Cartons/percent (000)	Cartons/percent (000)	Cartons/percent (000)	Cartons (000)
*	*	*	*	*	*
(c) 12-27-90	900.0/100				900
*	*	*	*	*	*

Dated: December 19, 1990.

Robert C. Keeney,

Deputy Director, Fruit and Vegetable Division.

[FR Doc. 90–30092 Filed 12–21–90; 8:45 am]

BILLING CODE 3410–02–M

Farmers Home Administration

7 CFR Part 1940

Set Aside of Section 515 Funds for Nonprofit Entities

AGENCY: Farmers Home Administration, USDA.

ACTION: Final rule.

SUMMARY: The Farmers Home Administration (FmHA) amends its regulations for allocating loan and grant program funds. This action is taken to implement recently enacted legislation. The intended outcome is to provide guidance on the set aside of section 515 funds for certain nonprofit entities.

EFFECTIVE DATE: December 24, 1990.

FOR FURTHER INFORMATION CONTACT: David J. Villano, Chief, Rural Rental Housing Branch, Multiple Family Housing Processing Division, room 5349–S, telephone (202) 382–1608. The address is: USDA–FmHA, South Agriculture Building, 14th and Independence Ave., SW., Washington, DC 20250.

SUPPLEMENTARY INFORMATION:

Classification

This final rulemaking action has been reviewed under USDA procedures established in Departmental Regulation 1512–1, which implements Executive Order 12291 and since this action only affects the administrative process by which FmHA loan funds are allocated and is required by law, it has been determined to be exempt from those requirements because it involves only internal Agency management.

Discussion of use of Final Rule

It is the policy of the Department to publish notice of proposed rulemaking with a comment period before rules are issued even though 5 U.S.C. 553 exempts rules relating to public property, loan, grants, benefits, or contracts. However, exemptions are permitted where an Agency finds, for good cause, that compliance would be impracticable, unnecessary or contrary to the public interest. As previously mentioned, FmHA considers this rulemaking package to be internal Agency management since it affects the administrative process by which funds are allocated. In addition, this package is issued to implement portions of the Cranston Gonzalez National Affordable Housing Act, which requires implementation within 120 days of enactment. The Cranston Gonzalez National Affordable Housing Act requires the set-aside of funds in Fiscal Years 1991 and 1992. Since these changes are legislatively mandated within a short time frame, it would not be possible to publish the regulation as a proposed rule with a 60-day comment period and then publish a final rule with a 30-day implementation period, as required in section 534 of the Housing Act of 1949, as amended. Further, the set aside of funds affects Fiscal Year (FY) 1991 appropriations. Much of the FY 91 appropriation would be expended by the time regulations could be promulgated under section 534 of the Housing Act—defeating the intent of the Act.

Environmental Impact Statement

This document has been reviewed in accordance with 7 CFR part 1940, subpart G, "Environmental Program." It is the determination of FmHA that this action does not constitute a major Federal action significantly affecting the quality of the human environment and, in accordance with the National Environmental Policy Act of 1969, Public Law 91–190, an Environmental Impact Statement is not required.

Programs Affected/Intergovernmental Consultation

The Section 515 program is listed in the Catalog of Federal Domestic Assistance under Number 10.415 Rural Rental Housing Loans and is subject to intergovernmental consultation with State and local officials.

General Information

Section 713 of the Cranston-Gonzalez National Affordable Housing Act (herein referred to as the "Act") adds subsection (w) to section 515 of the Housing Act of 1949, as amended. The Act provides that for each State, not less than 7 percent of FY 91 funds and not less than 9 percent of FY 92 funds must be set aside and made available for any nonprofit entity which is not wholly or partially owned or controlled by a for-profit entity or under whole or partial control with a for-profit entity. FmHA has developed exhibit B to subpart L to part 1940 to implement the provisions of the Act.

In exhibit B, FmHA has provided further guidance on what type of entity may participate in the Nonprofit Set Aside (NPSA) since the Act does not provide definitive guidance. In developing this guidance and exhibit B in general, FmHA reviewed the Conference Report of the House of Representatives (House Report 101–922), and testimony provided on the Act. The conference report is quite clear that only private nonprofits, consumer cooperatives, and Indian tribes may participate in the NPSA. For-profit entities, especially co-ventures with nonprofit entities, as well as public bodies and housing authorities are not eligible to access these set aside funds.

The FmHA National Office will reserve 7 percent in FY 91 and 9 percent in FY 92 of each States section 515 allocation in the National Office. In States where 7 percent of their allocation is less than $750,000, 7 percent of their allocation has been combined to form the Small State Allocation Set Aside (SSASA). In States where seven percent of their allocation is in excess of $750,000, 7 percent of their allocation has been combined to form the Large State Allocation Set Aside (LSASA). The two reserves were created because the Act clearly differentiates between States with smaller and larger allocations, and time frame when unused funds can be pooled. Pooling dates have also been established to ensure that all eligible nonprofits have access to this nationwide set aside.

Exhibit B also provides the authority for State Directors to issue AD–622's requesting a formal application from the highest ranking eligible nonprofit entity in the State up to 150% of the amount they contributed to the NPSA. This will provide eligible nonprofits with the priority needed to access NPSA funds.

An exception authority is also included which provides the Administrator with the authority to make exceptions to the Exhibit. FmHA believes this authority is necessary to provide flexibility to the Agency, within statutory intent, to make exceptions which will assist in making the NPSA a success and achieve legislative intent.

List of Subjects in 7 CFR Part 1940

Administrative practice and procedure, Agriculture, Allocations, Grant programs—Housing and community development, Loan programs—Housing and community development, Rural areas.

Therefore, chapter XVIII, title 7, Code of Federal Regulations is amended as follows:

PART 1940—GENERAL

1. The authority citation for part 1940 continues to read as follows:

Authority: 42 U.S.C. 1480; 7 CFR 2.23; 7 CFR 2.70.

Subpart L—Methodology and Formulas for Allocation of Loan and Grant Program Funds

2. Exhibit B is added to subpart L to part 1940 to read as follows:

Exhibit to Subpart L

Exhibit B—Section 515 Nonprofit Set Aside (NPSA)

I. *Objective:* To provide eligible nonprofit entities with a reasonable opportunity to utilize Section 515 funds.

II. *Background:* The Cranston-Gonzalez National Affordable Housing Act of 1990, requires that FmHA set aside 7 percent of FY 91 and 9 percent of FY 92 funds for use by certain nonprofit entities.

III. *Eligible nonprofit entities.* Notwithstanding the definition of "Nonprofit" in subpart E of part 1944 of this chapter, to receive funds from this set aside, the applicant must be a nonprofit entity which meets the following conditions:

A. Is a private nonprofit organization, consumer cooperative or Indian Tribe;

B. Whose principle purposes include the planning, development and management of low-income housing;

C. Is exempt from federal income taxes under section 501(c)(3) and 501(c)(4) of the Internal Revenue Code;

D. Is not wholly or partially owned or controlled with/by a "for profit" entity;

E. Is not a public body, housing authority, limited partnership, limited partnership with a nonprofit general partner; and

F. Is not co-venturing with a "for profit" entity eligible for section 515 assistance.

IV. *Amount of set aside.* Seven percent in FY 91 and nine percent in FY 92 of each States section 515 allocation has been set aside for nonprofit applicants defined in paragraph III. Rental Assistance (RA) has also been set aside in the National Office reserve for use with set aside funds.

V. *Location of set aside.* All set aside funds and RA have been reserved in the National Office as follows:

A. *Small State Allocation Set Aside (SSASA):* In all States where 7 percent of the State's FY 91 allocation is less than $750,000, 7 percent of the State's allocation has been reserved and combined to form the SSASA. In FY 92, the percentage is increased from 7 percent to 9 percent.

B. *Large State Allocation Set Aside (LSASA):* In all States where 7 percent of the State's allocation is more than $750,000, 7 percent of the State's allocation has been reserved and combined to form the LSASA. In FY 92, the percentage is increased from 7 percent to 9 percent.

C. *Nonprofit RA Set Aside:* 700 units of RA in FY 91 and 900 units in FY 92 have been reserved in the National Office for use with SSASA and LSASA funds.

VI. *Access to funds and RA:* RA is available and may be requested, as needed, with eligible loan requests. Funds and RA should be requested on Attachment 1 of this exhibit (available in any FmHA State Office.) Funds are available as follows:

A. *SSASA:* The following conditions apply:

1. The SSASA is available to any SSASA state on a first-come first-served basis until COB June 14, 1991.

2. On June 17, 1991, all unused SSASA funds will be pooled and made available to any SSASA state on a first-come first-served basis until COB July 12, 1991.

3. Unused funds, as of COB July 12, 1991, will be returned to States which did not utilize the full amount of set aside funds they contributed. The amount of funds returned to a State will be proportionate to the amount it contributed. States may utilize those funds for Section 515 proposals ready for obligation without regard to applicant entity.

B. *LSASA*: The following conditions apply:

1. States may request LSASA funds, up to the amount the State contributed to the LSASA until COB July 12, 1991.

2. Unused funds will be returned to each State as of COB July 12, 1991. States may utilize those funds for section 515 proposals ready for obligation without regard to applicant entity.

VII. *Priority/Processing of Preapplications:* Preapplications/applications for assistance from eligible nonprofits must continue to meet all loan making requirements of subpart E of part 1944 of this chapter. The State Director may issue AD–622s requesting a formal application to the highest ranking preapplication(s) from nonprofit entities defined in paragraph III of this exhibit. In LSASA states, AD–622s may not exceed 150 percent of the amount the State contributed to the LSASA. In SSASA states, AD–622s may not exceed the greater of $750,000 or 150 percent of the amount the state contributed to the SSASA.

VIII. *Exception Authority.* The Administrator, or his/her designee, may, in individual cases, make an exception to any requirements of this exhibit which are not inconsistent with the authorizing statute, if he/she finds that application of such requirement would adversely affect the interest of the Government or adversely affect the intent of the authorizing statute and/or RRH program or result in an undue hardship by applying the requirement. The Administrator, or his/her designee, may exercise this authority upon the request of the State Director, Assistant Administrator for Housing, or Director of the Multi-Family Housing Processing Division. The request must be supported by information that demonstrates the adverse impact or effect on the program. The Administrator, or his/her designee, also reserves the right to change pooling dates, establish/change minimum and maximum fund usage from the reserve, or restrict participation in the set aside.

Dated: December 17, 1990.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 90–30056 Filed 12–21–90; 8:45 am]

BILLING CODE 3410–07–M

DEPARTMENT OF TRANSPORTATION

Federal Aviation Administration

14 CFR Parts 21 and 29

[Docket No. 90–ASW–4; Special Condition No. 29–ASW–1]

Special Conditions: Aerospatiale Model AS 332L2 Super Puma Helicopter, Integrated Flight Display System

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Final special conditions.

SUMMARY: These special conditions are issued for the Aerospatiale Model AS 332L2 helicopter. This helicopter will have a novel and unusual design feature associated with an Integrated Flight Display System. These special conditions contain additional safety standards that the Administrator considers necessary to establish a level of safety equivalent to that provided by the applicable airworthiness standards.

EFFECTIVE DATES: January 23, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Richard Vaughn, FAA, Rotorcraft Standards Staff, Regulations Group, Fort Worth, Texas 76193–0111; telephone (817) 624–5121.

SUPPLEMENTARY INFORMATION:

Background

On August 17, 1989, Aerospatiale Division Helicopters, 13725 Marignane, Cedex, France, applied for an amendment to its Type Certificate No. H4EU to include the new Aerospatiale Model AS 332L2 helicopter. The Aerospatiale Model AS 332L1 is being modified to incorporate rotor and airframe modifications, various system improvements, gross weight and airspeed increases, and the addition of an Integrated Flight Display System. The Model AS 332L2 will be a derivative of the Model AS 332L1, which is currently approved under Type Certificate No. H4EU. The Model AS 332L1 is a 24-passenger, two-engine, 18,960-pound transport category helicopter.

Type Certification Basis

The certification basis established for the Model AS 332L2 includes: § 21.29; part 29, effective February 1, 1965, including Amendments 29–1 through 29–9, plus §§ 29.951(c), 29.1183 and 29.1304(a)(16) of Amendment 29–10 and the special condition adopted by this rulemaking action. Aerospatiale also elected to comply with Amendments 29–10 through 29–16 and the Airworthiness Criteria for Helicopter Instrument Flight, dated December 15, 1978, except for § 29.397 of Amendment 29–12 concerning rotor brakes.

Special conditions may be issued and amended, as necessary, as part of the type certification basis if the Administrator finds that the airworthiness standards designated in accordance wtih § 21.101(b)(2) do not contain adequate or appropriate safety standards because of novel or unusual design features of an aircraft or installation.

Special conditions, as appropriate, are issued in accordance with § 11.49 after public notice, as required by §§ 11.28 and 11.29(b), effective October 14, 1980, and becomne a part of the type certification basis, as provided by § 21.101(b)(2).

Discussion

Notice of Proposed Special Conditions No. SC–90–1–SW was published in the **Federal Register** on May 2, 1990 (55 FR 18346). One commentor responded and agrees with the special condition. Therefore, the special condition is adopted as proposed.

The Aerospatiale Model AS 332L2 helicopter will incorporate one or possibly more electrical/electronic systems that will be performing functions critical to the continued safe flight and landing of the helicopter. The Integrated Flight Display System displays attitude, altitude, and airspeed. Displaying this information to the pilot is critical to the continued safe flight and landing of the helicopter for instrument flight rules (IFR) operations in Instrument Meteorological Conditions. When the design is finalized, Aerospatiale Division Helicopters will provide the FAA with a preliminary hazard analysis that will identify any other critical functions performed by electrical/electronic systems.

If it is determined that this helicopter incorporates other electrical/electronic systems performing critical functions, it will be necessary to show that those systems meet the requirements of this special condition.

Conclusion

This action affects only certain unusual or novel design features on one model of rotorcraft. This action is not a rule of general applicability and affects only the manufacturer who applied to the FAA for approval of these features on the rotorcraft identified in this special condition.

List of Subjects in 14 CFR Parts 21 and 29

Aircraft, Air transportation, Aviation safety, Rotorcraft, Safety.

The Authority citation for these special conditions is as follows:

Authority: 49 U.S.C. 1344, 1348(c), 1352, 1354(a), 1355, 1421 thorugh 1431, 1502, 1651(b)(2); 42 U.S.C. 1857f–10, 4321 et seq.; E.O. 11541; 49 U.S.C. 106(g) (Rev. Pub. L. 97–449, January 12, 1983).

The Special Condition

Accordingly, pursuant to the authority delegated to me by the Administrator of the Federal Aviation Administration, the following special condition is issued as part of the type certification basis for the Aerospatiale Model AS 332L2 helicopter.

Protection for Electrical/Electronic Systems from High Energy Radiated Electromagnetic Fields.

Each system that performs critical functions must be designed and installed to ensure that the operation and operational capabilities of these

critical functions are not adversely affected when the helicopter is exposed to high energy radiated electromagnetic fields external to the helicopter.

Issued in Forth Worth, Texas, on December 17, 1990.

James D. Erickson,

Manager, Rotorcraft Directorate, Aircraft Certification Service.

[FR Doc. 90-30010 Filed 12-21-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF STATE

Bureau of Consular Affairs

22 CFR Part 193

[Public Notice 1305]

Benefits for Hostages in Iraq, Kuwait, and Lebanon

AGENCY: Bureau of Consular Affairs (DOS).

ACTION: Interim final rule.

SUMMARY: The Bureau of Consular Affairs, Department of State is issuing interim regulations to implement section 599C of Public Law 101-513 (the Foreign Operations, Export Financing, and Related Programs Appropriations Act [hereinafter the Act], FY-1991 enacted November 5, 1990. The interim rule adds part 193 to 22 CFR for the purpose of implementing section 599C of Public Law 101-513 which provides limited monetary payments and Federal life and health insurance benefits as a humanitarian gesture to certain United States nationals held hostage in Kuwait, Iraq, or Lebanon, and to the family members thereof, subject to specified funding and other limitations. These regulations describe the classes of persons who may apply for benefits under the Act and the procedures according to which such applications will be processed by the Department of State. The rule also affects favorably certain aliens.

DATES: Effective December 4, 1990. Comments on this interim final rule must be received on or before January 23, 1991.

ADDRESSES: Written comments should be addressed to: Director, Office of Citizens Consular Services, Bureau of Consular Affairs, room 4817, Department of State, Washington, DC 20520-4818.

FOR FURTHER INFORMATION CONTACT: Carmen A. DiPlacido, Director, Office of Citizens Consular Services, Telephone: (202) 627-3666.

SUPPLEMENTARY INFORMATION: Subsection 599C(b)(2) of the FY 1991 Foreign Operations Export Financing, and Related Programs Appropriations Act. Fiscal Year 1991. Public Law No. 101-513. "Benefits for United States Hostages in Iraq and Kuwait and United States Hostages Captured in Lebanon" [hereinafter the "Act"] authorizes the payment of monetary benefits (at the rate of pay for a GS-9, Step 1 General Schedule Federal employee) to United States national hostages in Iraq, Kuwait, and Lebanon for lost private sector wages for the period in which such individuals are in a hostage status after a specified date without their (or their family members on their behalf) receiving salaries or wages from their employers.

Subsection 599C(b)(3) of the Act provides for Federal health benefits for such hostages and their family members (defined in subsection 599C(d)(2) as spouses, dependents, and household members) during the period of such individuals' hostage status and for a twelve-month period after the termination of such status, where such benefits are not being provided from another source.

Subsection 599C(b)(4) of the Act provides for Federal life insurance benefits for such hostages for the duration of their hostage status and for twelve months thereafter, where such benefits are not being provided from another source. (5 U.S.C. 8705 provides for a statutory order of precedence in the absence of a properly executed designation of beneficiary.)

All benefits contemplated by section 599C are subject to the availability of funds under subsection 599C(e), which limits the payment of benefits to ten million dollars of Economic Support Fund moneys. The authority to obligate funds under section 599C expires six months from the date of enactment.

Final determinations regarding qualifying status for life and health insurance coverage under the Act shall be made by the Office of Personnel Management in accordance with the standards prescribed in 5 CFR parts 870 and 890.

The Act provides only for Federal health and life insurance and for monetary payments at the level of a GS-9, Step 1 Federal General Schedule employee. Nothing in the Act entitles hostages or their family members to Federal employment status for any purpose. Section 599C(a) specifies that no covered individual shall receive any benefit under title 5 of the United States Code, except as otherwise provided by law. This means, for example, that nothing in the Act confers upon any beneficiary such benefits of Federal employment as Federal service credit, Federal retirement credit, entitlement to enroll in the Thrift Savings Plan, or death-in-service benefits (other than life insurance). Furthermore, the Department of State (hereinafter, the "Department") construes the Act as requiring the deduction from any monetary payments for lost private sector wages or salaries of Federal income tax and similar Federal withholding payments (except for FICA payments which are required on payments defined as remuneration for employment).

Under subsection 599C(c)(3), the Secretary of State (hereinafter, the "Secretary") may require of any individual such verification of hostage status as he or she deems necessary. Subsection 599C(c)(2) authorizes the Secretary to submit the requisite certifications of eligibility in classified form.

The Act's legislative history (Cong. Rec. S16344-45, daily ed., October 22, 1990) clarifies that the principal purpose of the legislation is to make "a humanitarian gesture," and that Congress intended to confer upon the implementing Federal agencies the broadest discretion to "work out the details" of program administration.

Given the humanitarian nature of the program, and the need to act promptly, the Department of State considers that Congress intended it to make appropriate designations for and on behalf of individuals who may be entitled to receive benefits under the Act, but who are unable to make applications in their own name because they remain in a hostage status and have no family members or no family members who have submitted applications. Accordingly, the Department will itself initiate and process applications in appropriate cases.

Waiver of Notice of Proposed Rulemaking, E.O. 12291, Federal Regulations, Regulatory Flexibility Act, and Paperwork Reduction Act

Compliance with 5 U.S.C. 553 of the Administrative Procedures Act relative to notice of proposed rule making and delayed effective date is impracticable and contrary to the public interest in this instance since expeditious implementation of this rule is mandated by the Congress in accordance with Public Law 101-513 effective November 5, 1990. This is not a major rule as defined under section 1(b) of E.O. 12291, Federal Regulations, nor is it expected to have a significant economic impact on a substantial number of small entities because they primarily affect United States hostages in Iraq, Kuwait, and

Lebanon (Regulatory Flexibility Act). This rule involves the collection of information subject to the Paperwork Reduction Act of 1980. This collection has been submitted to the Office of Management and Budget for review under the provisions of Paperwork Reduction Act and 5 CFR part 1320.

List of Subjects in 22 CFR Part 193

Applications, Benefits, Claims, Hostages, U.S. citizens, U.S. nationals.

Accordingly, part 193 is added as follows:

PART 193—BENEFITS FOR HOSTAGES IN IRAQ, KUWAIT, OR LEBANON

Sec.
193.1 Determination of hostage status.
193.2 Definitions.
193.3 Applications.
193.4 Consideration and denial of claims: Notification of determinations.

Authority: Section 599C, Pub. L. No. 101–513.

§ 193.1 Determination of hostage status.

(a) The Secretary of State shall, upon his or her own initiative or upon application under § 193.3, notify the appropriate federal authorities, in classified or unclassified form as he or she determines to be necessary in the best interests of the affected individuals, the names of persons whom he or she determines to be in a hostage status within the meaning of subsection 599C)(d) of Public Law No. 101–513.

(b) In the case of Iraq and Kuwait, hostage status may be accorded to United States nationals, or family members of United States nationals,

(1) who are or who have been in a hostage status as defined in paragraph (b)(2) of this section in Iraq or Kuwait at any time during the period beginning on August 2, 1990 and terminating on the date on which United States economic sanctions are lifted, and

(2) who are being or who have been held in custody by governmental or military authorities of such country or who are taking or have taken refuge in the country in fear of being taken into such custody (including residing in any diplomatic mission or consular post in that country.)

(c) In the case of Lebanon, hostage status may be accorded to United States nationals who are or have been forcibly detained, held hostage, or interned by an enemy government or its agents, or a hostile force, in Lebanon at any such time since January 1, 1990.

(d) Determinations of the Secretary regarding questions of eligibility status under 599C of the Act shall be final, but interested persons may request administrative reconsideration on the basis of information which was not considered at the time of the original determination. The criteria for such determinations are those which are prescribed in the Act and in these regulations.

(e) Eligibility determinations made under these regulations shall not be deemed to confer federal employment status for any purpose.

(f) Eligibility for benefits shall be subject to the availability of funds under subsection 599C(e) of the Act.

§ 193.2 Definitions.

(a) For purposes of eligibility, the term *covered family members* shall be defined as prescribed by the Office of Personnel Management in accordance with 5 CFR § 890.1202.

(b) The term *United States economic sanctions against Iraq* means the exercise of authorities under the International Emergency Economic Powers Act by the President with respect to financial transactions with Iraq.

(c) The term *United States national* means any individual who is a citizen of the United States or who, though not a citizen of the United States, owes permanent allegiance to the United States.

§ 193.3 Applications.

(a) Individuals who claim any eligibility under section 599C of the Act may apply for benefits in accordance with the procedures described herein. Family members may submit applications on behalf of persons who are unable to do so by reason of their hostage status.

(b) All applications for benefits [1] shall be attested to by a declaration under penalty of perjury as prescribed in section 1746 of title 28 of the United States Code.

(c) Applications shall contain all identifying and other data to support the claim, including, where appropriate, copies of relevant documents respecting status, salary, and health and life insurance coverage.

(d) All applications shall be mailed to: Kuwait/Iraq/Lebanon Hostage Benefits Program, room 4817, Department of State, Washington, DC 20520–4818.

(e) Applications should be filed as soon as possible, because funds for benefits under the Act may not be obligated after the expiration of six months from the date of enactment.

[1] Application form may be obtained from the Office of Citizens Consular Services, Department of State, Washington, DC 20520.

(f) The Department of State may require of applicants such additional verification of hostage status and other pertinent information as it deems necessary.

§ 193.4 Consideration and denial of claims: Notification of determinations.

(a) No application under this subpart may be denied by the Department except upon the written concurrence of the Assistant Legal Adviser for Consular Affairs.

(b) All applications shall be considered, evaluated, and/or prepared by hostage caseworkers from the Kuwait/Iraq Task Force in consultation with, and under the general supervision of, the Office of Overseas Citizens Consular Services of the Bureau of Consular Affairs, which shall coordinate with potential by interested federal agencies.

(c) The Department of State shall, where possible, notify individuals in writing of their eligibility for benefits under the Act, or ineligibility therefor, within thirty days of the Department's decision.

U.S. Department of State, Bureau of Consular Affairs.

Dated: November 30, 1990.

John H. Adams,

Acting Assistant Secretary

[FR Doc. 90–29385 Filed 12–21–90; 8:45 am]

BILLING CODE 4710–06–M

DEPARTMENT OF JUSTICE

28 CFR Part O

[Directive No. 50–90]

Delegations of Authority

AGENCY: Department of Justice.

ACTION: Final rule.

SUMMARY: This is a Directive providing for delegations of authority from the Assistant Attorney General for the Environment and Natural Resources Division to the Section Chief of the Environmental Enforcement Section to initiate and settle certain classes of civil environmental cases. This Directive delegates authority pursuant to the authority delegated to the Assistant Attorney General by the Attorney General at 28 CFR chapter 1, part O, subpart M and subpart Y, §§ 0.160, 0.162, and 0.168.

EFFECTIVE DATE: December 24, 1990.

FOR FURTHER INFORMATION CONTACT: David T. Buente, Chief, Environmental Enforcement Section, Environment and Natural Resources Division, room 1521,

10th and Constitution, Washington, DC 20530 (202) 514–5404.

SUPPLEMENTARY INFORMATION: This Directive is not a rule within the meaning of Executive Order 12291, section (a) because it is a regulation related to agency management under section (1)(a)(3), and therefore, exempted under (1)(a). This Directive is not covered by the Regulatory Flexibility Act, 5 U.S.C. 601 *et seq.*, because it will not have an undue impact on small businesses.

List of Subjects in 28 CFR Part O

Administrative practice and procedure, Authority delegations (government agencies), organization and functions (government agencies).

By virtue of the authority invested in me by 28 CFR 0.65a and 0.168, the appendix to subpart Y of part O of title 28 of the Code of Federal Regulations is amended as follows:

PART O—ORGANIZATION OF THE DEPARTMENT OF JUSTICE

In the appendix to subpart Y, in the Section headed Land and Natural Resources Division, immediately after Directive 7–76, a new Directive 90–50 is added to read as follows:

Redelegation of Authority To Initiate and To Compromise Environment and Natural Resources Division Cases

Pursuant to the authority vested in me by title 28 of the Code of Federal Regulations, and particularly §§ 0.65, 0.65(a), 0.160, 0.162, 0.164, 0.166, 0.168 and 50.7 thereof, I hereby redelegate to the Section Chief of the Environmental Enforcement Section, the following authority to initiate and to compromise Environment and Natural Resources Division cases and to approve **Federal Register** Notices describing settlements of actions to enjoin discharges of pollutants into the environment.

Authority To Initiate Cases

The Section Chief of the Environmental Enforcement Section is hereby authorized to initiate civil actions on behalf of any other department or agency in response to a written request from an authorized official of the department or agency concerned, under the following environmental statutes:

1. Cases under section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136l(a), section 16 of the Toxic Substances Control Act, 15 U.S.C. 2615(a) and section 309(g)(9) of the Clean Water Act, 33 U.S.C. 309(g)(9), for collection of civil penalties previously assessed by the Environmental Protection Agency in a formal administrative proceeding.

2. Cases under sections 112 and 113 of the Clean Air Act, 42 U.S.C. 7412 and 7413 for violations of the national emission standards for asbestos hazardous air pollutants.

3. Cases under section 311 of the Clean Water Act, 33 U.S.C. 1321, for recovery of costs expended by the United States' to remove oil or hazardous substances discharged into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone where such costs do not exceed $1 million, exclusive of interest.

4. Cases under section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9604(e) to enforce requests for access to information, entry and/or inspection and samples.

5. Cases under section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607, for recovery of costs of removal or remedial action incurred by the United States where such costs do not exceed $1 million, exclusive of interest.

Any case initiation under paragraphs 1–5 above, should be referred to the Assistant Attorney General, Environment and Natural Resources Division, for approval, whenever the Section Chief of the Environmental Enforcement Section is of the opinion that because of a question of law or policy presented, or for any other reason, the matter should receive the attention of the Assistant Attorney General, Environment and Natural Resources Division.

Authority To Compromise Cases

The Section Chief of the Environmental Enforcement Section is hereby authorized to compromise civil claims on behalf of the United States under the following environmental statutes:

1. Cases under section 14 of the Federal Insecticide, Fungicide, and Rodenticide Act, 7 U.S.C. 136*l*(a), section 16 of the Toxic Substances Control Act, 15 U.S.C. 2615(a) and section 309(g)(9) of the Clean Water Act, 33 U.S.C. 309(g)(9), for collection of civil penalties previously assessed by the Environmental Protection Agency in a formal administrative proceeding.

2. Cases under sections 112 and 113 of the Clean Air Act, 42 U.S.C. 7412 and 7413 for violations of the national emission standards for asbestos hazardous air pollutants.

3. Cases under the Safe Drinking Water Act, 42 U.S.C. 300(f) *et seq.*, the Resource Conservation and Recovery Act, 42 U.S.C. 6901 *et seq.*, the Clean Air Act, 42 U.S.C. 7401 *et seq.*, the Clean Water Act, 33 U.S.C. 1251 *et seq.*, the Federal Insecticide, Fungicide and Rodenticide Act, 7 U.S.C. 136 *et seq.*, and the Toxic Substances Control Act, 15 U.S.C. 2601 *et seq.*, where the amount of the civil penalty to be paid to the United States does not exceed $100,000.

4. Cases under section 311 of the Clean Water Act, 33 U.S.C. 1321, for recovery of costs expended by the United States to remove oil or hazardous substances discharged into or upon the navigable waters of the United States, adjoining shorelines, or into or upon the waters of the contiguous zone, where such costs do not exceed $1 million, exclusive of interest, and the difference between the United States' claim and the proposed settlement does not exceed $500,000.

5. Cases under section 104(e) of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9604(e), to enforce requests for access to information, entry and/or inspection and samples.

6. Cases under section 107 of the Comprehensive Environmental Response, Compensation and Liability Act, 42 U.S.C. 9607, for recovery of costs of removal or remedial action incurred by the United States, where such costs do not exceed $1 million, exclusive of interest, and the difference between the United States' claim and the proposed settlement does not exceed $500,000.

Any settlement under paragraphs 4 and 6 above, regardless of the amount or circumstances, should be referred to the Assistant Attorney General, Environment and Natural Resources Division, when for any reason, the compromise of a particular claim, as a practical matter, will control or adversely influence the disposition of other claims totalling more than $500,000. In addition, any settlement under paragraphs 1–6 above should be referred to the Assistant Attorney General, Environment and Natural Resources Division, whenever the Section Chief of the Environmental Enforcement Section is of the opinion that because of a question of law or policy presented, or because of opposition to the proposed settlement by the agency or agencies involved, or for any other reason, the offer should receive the personal attention of the Assistant Attorney General, Environment and Natural Resources Division.

Authority To Approve Federal Register Notices

The Section Chief of the Environmental Enforcement Section is hereby authorized to approve all **Federal Register** Notices under 28 CFR 50.7 and to transmit those notices to the Assistant Attorney General, Office of Legal Counsel, for publication.

Authority of Persons Acting in the Capacity of the Section Chief, Environmental Enforcement Section

In the event that another person is acting in the capacity of the Section Chief, Environmental Enforcement Section, that person will have the authority to initiate and to compromise cases under these delegations only if specifically authorized in writing by the Assistant Attorney General, Environment and Natural Resources Division.

Date of Delegations

This Directive shall be effective December 24, 1990, and the United States Attorneys' Manual will be revised accordingly.

Richard B. Stewart,

Assistant Attorney General, Environment and Natural Resources Division.

Dated: December 4, 1990.

Approved:

William P. Barr,

Deputy Attorney General.

[FR Doc. 90–30007 Filed 12–21–90; 8:45 am]

BILLING CODE 4410–01–M

DEPARTMENT OF LABOR

Occupational Safety and Health Administration

29 CFR Part 1910

RIN 1216–AB26

Air Contaminants

AGENCY: Occupational Safety and Health Administration; U.S. Department of Labor.

ACTION: Final rule; interpretation.

SUMMARY: This notice interprets provisions of the Air Contaminants Standard, 29 CFR 1910.1000, applicable to the grain dust, starch, sucrose, vegetable dust and particulates not otherwise regulated exposure limits for the grain handling industry.

EFFECTIVE DATE: December 24, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. James Foster, Occupational Safety and Health Administration, Office of Information and Consumer Affairs, room N–3647, U.S. Department of Labor, 200 Constitution Avenue NW., Washington, DC 20210, telephone: (202) 523–8148.

SUPPLEMENTARY INFORMATION: OSHA published its final rule on Air Contaminants on January 19, 1989, at 54 FR 2332–2963. That rule amends 29 CFR 1910.1000 and its tables.

That rule issued a new permissible exposure limit (PEL) for grain dust, defined as oat, wheat and barley dust, of 10 mg/m^3 as an eight hour time weighted average (TWA). It also specified PEL's for starch, sucrose and vegetable oil of 15 mg/m^3 total dust and 5 mg/m^3 respirable dust as TWA's. In addition, it established a limit for "particulates not otherwise regulated" (PNOR), which had previously been known as the nuisance dust limit, of 15 mg/m^3 total dust and 5 mg/m^3 respirable dust as TWA's. This PNOR limit applied to all dusts not otherwise regulated, including all grain dusts not covered by the specific grain dust limit.

The National Grain and Feed Association (NGFA) petitioned the court of appeals to review those limits and the AFL–CIO petitioned the court to review the grain dust limit. The NGFA, AFL–CIO and OSHA have settled the litigation, which has been terminated in regard to these substances. The exposure limits specified above as stated in 29 CFR 1910.1000 remain in effect.

Consistent with the settlement agreement, OSHA has issued the following interpretation which applies only to the grain handling industries defined as those industries contained in SIC Codes 0723, 2041, 2044, 2046, 2047, 2048, 2075, 4221 and 5153. This interpretation applies only to exposure to grain dust, starch, sucrose, vegetable oil and PNOR.

1. Between September 1, 1989 and December 31, 1992, the grain handling industry will have available all the alternatives for compliance made generally available to all other industries (i.e. as specified in the Final Rule, 29 CFR 1910.1000, 54 FR 2332–2963, January 19, 1989), such that requirements may be met by any reasonable combination of engineering controls, work practices, and personal protective equipment.

2. After December 31, 1992, the following binding interpretations of 29 CFR 1910.1000(e) shall apply to facilities in the grain handling industry as specified hereafter:

(a) Small Facilities and Intermittent Operations

(i) For small facilities or intermittent operations as identified in paragraphs (iii) and (iv) below, the requirement in 29 CFR 1910.1000(e) that compliance with paragraphs (a) through (d) of 29 CFR 1910.1000 be achieved by means of feasible administrative or engineering controls shall be subject to the binding interpretations stated in paragraphs (ii), (iii), and (iv) below. Administrative or engineering controls may include, but are not limited to, the use of edible oil additives, maintaining the integrity of grain conveyance systems, the avoidance of long free falls of grain during loading/unloading procedures, the installation of filtered air booths for employee protection, administrative and work practices and, subject to paragraph (ii), pneumatic dust control systems.

(ii) For the facilities and time periods specified in paragraphs (iii) and (iv), the requirement that compliance with the Standards in 29 CFR 1910.1000 for grain dusts, PNOR, sucrose, starch and vegetable oil be achieved through feasible administrative or engineering controls shall in no case be applied so as to require the implementation of pneumatic dust control systems in existing facilities where such systems are not already installed. In newly constructed or substantially renovated facilities (construction beginning after December 31, 1992), the provisions that apply to all other engineering controls shall be applicable to such systems. In existing facilities in which pneumatic dust systems have been installed prior to 1992, such systems will be required to be maintained unless alternative means of meeting PEL requirements through administrative or engineering controls are implemented.

(iii) The provisions of paragraph (ii) shall be applicable to the following facilities:

(1) Feed mill facilities that produce less than 25,000 tons of feed per year;

(2) Elevator facilities that have less than 500,000 bushels of permanent storage capacity and are not attached to a mill or processor, other than a feed mill that produces less than 25,000 tons of feed per year;

(3) Elevator facilities that have less than 750,000 bushels of permanent storage capacity and actively handled grain for six (6) months (1,040 hours) or less annually, on average during the most recent five (5) years, and are not attached to a mill or processor, other than a feed mill that produces less than 25,000 tons of feed per year.

(iv) The provisions of paragraph (ii) shall be applicable to the following facilities until December 31, 1994:

(1) Feed mill facilities that produce less than 50,000 tons of feed per year; or

(2) Elevator facilities that have less than 1,500,000 bushels permanent storage capacity.

(b) Intermittent Exposure and Limited Technical Efficiency

For all facilities in the grain handling industries compliance with paragraphs (a) through (d) of 29 CFR 1910.1000 may be achieved by the use of personal protective equipment for the following work tasks:

(1) When employees take grain samples for the purpose of weighing or grading during truck or railcar unloading;

(2) During loadout procedures when employees must direct grain glow and adjust spouting mechanisms and/or loadout devices;

(3) Unloading bins and tanks where employees must physically enter the storage area to clean out any residual product;

(4) During blow down operations; or

(5) During other intermittent work tasks in which there is exposure to regulated dusts (totaling less than one (1) hour per worker, per shift) such as maintenance of dust exhaust systems, maintenance of conveyor systems, preventive maintenance, operational inspections, and adjusting grain flow.

(c) Respirator Programs

Where 29 CFR 1910.1000(e) or the foregoing binding interpretations thereto permit compliance to be achieved by the use of personal protective equipment, such equipment shall be used in

compliance with the provisions of 29 CFR 1910.134.

The above interpretations shall remain in effect at least until December 31, 1999. Any possible future changes to the exposure limits for grain dust, starch, sucrose and vegetable oil will not take effect prior to September 1, 1996 for the grain handling industry unless there are new studies demonstrating significant health effects for these substances.

The above interpretation is not intended to affect the Grain handling facilities standard, 29 CFR 1910.272, or any other regulatory requirements other than the PELs set out in 29 CFR 1910.1000 for grain dust, PNOR, starch, sucrose and vegetable oil, the methods of compliance with these PELs set out in 29 CFR 1910.1000(e) and the implementation dates set out in 29 CFR 1910.1000(f).

This interpretation clarifies certain circumstances when respirators may be used for compliance because engineering controls may be technically or economically infeasible or inappropriate. It also indicates certain engineering controls which generally would be feasible subject to a demonstration of infeasibility in an individual circumstance pursuant to 29 CFR 1910.1000(e). OSHA concludes that the settlement and this interpretation together will substantially improve the health of workers exposed to grain dust, PNOR, starch, sucrose, and vegetable oil by maintaining the limits issued January 19, 1989 and by clarifying appropriate and feasible methods of compliance.

Signed in Washington, DC this 18th day of December, 1990.

Gerald F. Scannell,

Assistant Secretary of Labor.

[FR Doc. 90-29949 Filed 12-21-90; 8:45 am]

BILLING CODE 4910-14-M

DEPARTMENT OF TRANSPORTATION

Coast Guard

33 CFR Part 89

[GD 90-070]

Alternative Compliance, Inland Navigation Rules

AGENCY: Coast Guard, DOT.

ACTION: Notice of termination of exemption period.

SUMMARY: This notice advises the public that the period of exemption from certain technical requirements for positioning of lights expires December 24, 1990, for inland waters and March 1, 1992, for the Great Lakes. Vessels built prior to implementation of the Inland Navigation Rules, and which have been operating under the exemption, are expected to be in full compliance by those dates. An owner or operator of a vessel of special construction or special purpose, who believes an exception from the technical requirements for positioning of lights is warranted, must obtain a Certificate of Alternative Compliance prior to expiration of the temporary exemption.

DATES: Certificates of Alternative Compliance for inland waters should be obtained prior to December 24, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. Edward J. LaRue, Jr., Acting Chief, Navigation Rules and Information Branch (G-NSR-3), at (202) 267-0416 for Navigation Rule interpretations, or Lieutenant Commander Brian Salerno, Compliance and Enforcement Branch (G-MVI-1), at (202) 267-1464 for inspection or enforcement questions.

SUPPLEMENTARY INFORMATION: Rule 38 of the Inland Navigation Rules, 33 U.S.C. 2038, exempts vessels which were built before the rules became effective from certain technical provisions concerning the position of lights. The nine-year exemption periods expire December 24, 1990, on inland waters, and March 1, 1992, on the Great Lakes. Vessels which have been operating under the temporary exemption of Rule 38 are expected to be in full compliance by those dates; however, vessels of special construction or special purpose, especially those 20 to 50 meters in length with the pilothouse located forward of a single mast and with sidelights forward of the masthead light, may be eligible for Certificates of Alternative Compliance, which will allow them to continue to operate under the Inland Navigation Rules with their existing lights.

An owner or operator who believes an exception should be made on the basis of the special construction or purpose of his/her vessel should follow the procedures contained in 33 CFR part 89 to obtain a Certificate of Alternative Compliance.

Background Information

The drafters of the Inland Navigation Rules recognized that complete and immediate compliance with the technical requirements for lights by existing vessels and vessels then under construction would be unreasonable. Accordingly, Rule 38 was created to exempt vessels under construction prior to the effective date of the Inland Navigation Rules from complying with specific technical provisions for nine years.

The drafters were also aware that some vessels were designed to serve such specialized purposes that some flexibility in permanent application of the technical requirements would be needed on a case-by-case basis. Under Inland Navigation Rule 1(e), this flexibility is administered by the Secretary of the department in which the Coast Guard is operating. The Secretary may issue a Certificate of Alternative Compliance for a vessel or class of vessels specifying the "closest possible compliance" with the Rules.

To implement these provisions of the Inland Navigation Rules, the Coast Guard promulgated regulations in 33 CFR Part 89 for issuing Certificates of Alternative Compliance.

Discussion

Sidelight and Masthead Light Placement (Annex I, Section 84.05(c)). Power-driven vessels of twenty meters or more in length built prior to December 24, 1981, operating at any time on inland waters must comply by December 24, 1990 (March 1, 1992 on the Great Lakes) with the following requirements for placement of sidelights: "On a power-driven vessel of 20 meters or more in length the sidelights shall not be placed in front of the forward masthead lights. They shall be placed at or near the side of the vessel." The forward masthead light refers to the light located "forward" as required by Rule 23(a), and therefore, the requirement that sidelights not be forward of this light applies whether a vessel less than 50 meters carries the optional second masthead light aft. Vessels built after December 24, 1981, (March 1, 1983, on the Great Lakes) should have been constructed to fully comply with the Inland Navigation Rules. A vessel may qualify for a Certificate of Alternative Compliance with respect to the above requirements. This may be of particular interest for a vessel which:

(1) Is between 20 and 50 meters in length; and

(2) Is a single masted vessel with a pilothouse in the forward or amidships part of the vessel and with sidelights located forward of the mast.

A vessel qualifies for a Certificate of Alternative Compliance if:

(1) The vessel is of special construction or purpose due to its trade or employment (these vessels are typically involved in towing or fishing); and

(2) Relocation of the forward masthead light or sidelights would interfere with its special function.

Examples of interference: repositioning of the lights to conform with Annex I, § 84.05(c) would cause glare in the eyes of the vessel operator and, therefore, would affect the ability of the operator to maintain a proper lookout; and the repositioning of the sidelights or masthead light may cause the lights to be less visible due to deck working lights or rigging. An owner or operator of a vessel who believes he/she is entitled to a Certificate of Alternative Compliance for the placement of sidelights and masthead light are urged to apply, following the procedures in 33 CFR Part 84 by December 24, 1990. The application should include information as to why the applicant believes the present or proposed installation constitutes the closest possible compliance with the Rules.

Owners, operators or agents may submit an application identifying a class in which several vessels have the same relevant characteristics. This single application should include a blueprint or drawing of a representative of the class, and should identify each vessel in the class by name and official number. When the application is approved, the Coast Guard District Commander will issue a "class" certificate containing a list of the approved vessels.

Compliance Action

Compliance with the Inland Navigation Rules provisions by December 24, 1990, is the responsibility of the vessel owner/operator. A vessel of special construction or purpose that is not in compliance should carry a Certificate of Alternative Compliance on board in accordance with 33 CFR part 89.

In taking enforcement action against a vessel not in compliance, the Coast Guard will take into account the scheduling of vessel modifications, any pending application for a Certificate of Alternative Compliance, and related matters.

Dated: December 18, 1990.

R.A. Appelbaum,

Rear Admiral, U.S. Coast Guard Chief, Office of Navigation Safety and Waterway Services.

[FR Doc. 90-30000 Filed 12-21-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 100

[CGD 05-90-86]

Special Local Regulations from Marine Events; New Years Eve Fireworks Display; Inner Harbor, Baltimore, MD

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: Special local regulations are being adopted for the New Years Eve Fireworks Display to be held at the Inner Harbor, Baltimore, Maryland. The fireworks will be launched from a barge anchored in the Inner Harbor approximately 200 yards south of Pier 6, Baltimore, Maryland. These regulations are necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event.

EFFECTIVE DATE: These regulations are effective from 11 p.m. December 31, 1990 to 1:30 a.m. January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Mr. Stephen L. Phillips, Chief, Boating Affairs Branch, Boating Safety Division, Fifth Coast Guard District, 431 Crawford Street, Portsmouth, Virginia 23704-5004, (804) 398-6204.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking has not been published for these regulations and good cause exists for making them effective in less than 30 days from the date of publication. Adherence to normal rulemaking procedures would not have been possible. Specifically, the sponsor's application to hold the events was not received in the district office until December 7, 1990, leaving insufficient time to publish a notice of proposed rulemaking in advance of the event.

Drafting Information

The drafters of this notice are QM1 Kevin R. Connors, project officer, Boating Affairs Branch, Fifth Coast Guard District, and Captain Michael K. Cain, project attorney, Fifth Coast Guard District Legal Staff.

Discussion of Regulations

The Baltimore Office of Promotion has submitted an application to hold a New Years eve fireworks display at the Inner Harbor, Baltimore, Maryland. The fireworks will be launched from a barge anchored in the Inner Harbor approximately 200 yards south of pier 6, Baltimore, Maryland. These regulations are necessary to control spectator craft and to provide for the safety of life and property on navigable waters during the event. Since the main shipping channel will not be closed for an extended period, commercial traffic should not be severely disrupted.

Economic Assessment and Certification

These regulations are not considered either major under Executive Order 12291 on Federal Regulation or significant under Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). The economic impact is expected to be so minimal that a full regulatory evaluation is unnecessary. Because of this minimal impact, the Coast Guard certifies that these regulations will not have a significant economic impact on a substantial number of small entities.

Federalism Assessment

This action has been analyzed in accordance with the principles and criteria contained in Executive Order 12612, and it has been determined that the final rules does not raise sufficient federalism implications to warrant the preparation of a Federalism Assessment.

Environmental Impact

This final rule has been thoroughly reviewed by the Coast Guard and has been determined to be categorically excluded from further environmental documentation in accordance with section 2.B.2.c of Commandant Instruction M16475.1B. A Categorical Exclusion Determination statement has been prepared and has been placed in permanent regulations 33 CFR 100.515 rulemaking docket.

List of Subjects in 33 CFR Part 100

Marine safety, Navigation (water).

Final Regulations

In consideration of the foregoing, part 100 of title 33, Code of Federal Regulations is amended as follows:

1. The authority citation for part 100 continues to read as follows:

Authority: 33 U.S.C. 1233; 49 CFR 1.46 and 33 CFR 100.35.

2. A temporary § 100.35-T86 is added to read as follows:

§ 100.35-T86 Inner Harbor, Baltimore, Maryland.

(a) *Definitions.* (1) *Regulated area.* The waters of the Inner Harbor bounded by the arc of a circle with a radius of 600 feet and with its center located at latitude 39°16'51.8" North, longitude 76°36'14.26" West.

(2) *Coast Guard Patrol Commander.* The Coast Guard Patrol Commander is a commissioned, warrant, or petty officer who has been designated by the Commander, Coast Guard Group Baltimore.

(b) *Special Local Regulations.* (1) Except for persons or vessels authorized by the Coast Guard Patrol Commander, no person or vessel may enter or remain in the regulated area.

(2) The operator of any vessel in the immediate vicinity of this area shall:

(i) Stop the vessel immediately when directed to do so by any commissioned, warrant, or petty officer on board a vessel displaying a Coast Guard ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard ensign.

(3) Any spectator vessel may anchor outside of the regulated area specified in paragraph (a)(1) of these regulations, but may not block a navigable channel.

(c) *Effective Dates:* These regulations are effective from 11 p.m. December 31, 1990 to 1:30 a.m. January 1, 1991.

Dated: December 14, 1990.

P.A. Welling,

Rear Admiral, U.S. Coast Guard Commander, Fifth Coast Guard District.

[FR Doc. 90-30001 Filed 12-21-90; 8:45 am]

BILLING CODE 4910-14-M

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33 CFR Part 165

[CGD-05-90-87; COTP Hampton Roads, Regulation 90-RFR-087]

Safety Zone Regulations: Chesapeake Bay, Tail of the Horseshoe, Virginia Beach, VA

AGENCY: Coast Guard, DOT.

ACTION: Temporary rule.

SUMMARY: The Coast Guard is establishing a safety zone in the Chesapeake Bay in the vicinity of the Tail of the Horseshoe. This zone is needed to ensure the safety of mariners in the vicinity of the Tail of the Horseshoe, Virginia Beach, Virginia, while the M/V Sheldon Lykes is anchored at position 36-58.0N latitude, 76-01.5W longitude, due to the potential hazards present from a suspected release of hazardous material aboard the M/V Sheldon Lykes. The Captain of the Port, Hampton Roads, Virginia will enforce a safety zone consisting of a circle having a radius of 1500 yards with the center approximately 1800 yards northwest of Thimble Shoal Channel Lighted Buoy 2 (Light List No. 8345), Chesapeake Bay, Virginia at position 36-58.0N latitude, 76-01.5W longitude. Vessels or individuals will not be permitted to enter the safety zone, except as permitted by the Captain of the Port or his designated representative.

EFFECTIVE DATE: This regulation is effective at 6 a.m., December 18, 1990 and shall terminate on or about December 25, 1990 unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia.

FOR FURTHER INFORMATION CONTACT: LT E.A. Washburn, Project Officer, USCG Marine Safety Office, Hampton Roads, Norfolk Federal Building, 200 Granby Street, Norfolk, Virginia 23510. TEL: (804) 441-3290, (FTS) 827-3290. LT Washburn may be reached from 7:30 a.m. until 4 p.m., Monday through Friday, except during Federal holidays.

SUPPLEMENTARY INFORMATION: In accordance with 5 U.S.C. 553, a notice of proposed rulemaking was not published for this regulation and good cause exists for making it effective in less than 30 days after **Federal Register** publication. Publishing an NPRM and delaying its effective date would be contrary to the public interest since immediate action is required to ensure the safety of mariners operating in the vicinity of the Tail of the Horseshoe, Virginia Beach, Virginia.

Drafting Information

The drafter of this regulation is LT E.A. Washburn, Project Officer for the Captain of the Port, Hampton Roads.

Discussion of Regulation

A safety zone is being established in the Chesapeake Bay in the vicinity of the Tail of the Horseshoe consisting of a circle having a radius of 1500 yards with the center approximately 1800 yards northwest of Thimble Shoal Channel Lighted Buoy 2 (Light List No. 8345), Chesapeake Bay, Virginia at position 36-58.0N latitude, 76-01.5W longitude. This zone is needed to ensure the safety of mariners in the vicinity of the Tail of the Horseshoe, Virginia Beach, Virginia, while the M/V Sheldon Lykes is anchored at position 36-58.0N latitude, 76-01.5W longitude, due to the potential hazards present from a suspected release of hazardous material aboard the M/V Sheldon Lykes. This safety zone will be enforced beginning at 6 a.m., December 18, 1990 and shall terminate on or about December 25, 1990 unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia. Coast Guard vessels will enforce the safety zone at all times while the zone is in effect. Commercial and recreational vessels will not be permitted to enter the safety zone.

List of Subjects in 33 CFR 165

Harbors, Marine safety, Navigation (water), Security measures, Vessels, Waterways.

Regulation

In consideration of the following, subpart C of part 165 of title 33, Code of Federal Regulations, is amended as follows:

PART 165—REGULATED NAVIGATION AREAS AND LIMITED ACCESS AREAS

1. The authority citation for part 165 reads as follows:

Authority: 33 U.S.C. 1231; 50 U.S.C. 191; 49 CFR 1.46 and 33 CFR 1.01-30, 165.5, 165.20, and 165.23.

2. In part 165 a new § 165.T0587 is added, to read as follows:

§ 165.T0587 Safety Zone: Chesapeake Bay, Tail of the Horseshoe, Virginia Beach, Virginia.

(a) *Location:* The following area is a safety zone: The waters of the Chesapeake Bay in the vicinity of the Tail of the Horseshoe, consisting of a circle having a radius of 1,500 yards with the center approximately 1,800 yards northwest of Thimble Shoal Channel Lighted Buoy 2 (Light List No. 8345), Chesapeake Bay, Virginia at position 36-58.0N latitude, 76-01.5W longitude.

(b) *Definitions:* The designated representative of the Captain of the Port is any Coast Guard commissioned, warrant or petty officer who has been authorized by the Captain of the Port, Hampton Roads, Virginia to act on his behalf. The following officers have or will be designated by the Captain of the Port: The senior Coast Guard boarding officer on each vessel enforcing the safety zone, and the Duty Officer at the Marine Safety Office, Norfolk, VA.

(1) The Captain of the Port, Hampton Roads and the Duty Officer at Marine Safety Office, Norfolk, Virginia can be contacted at telephone (804) 441-3307.

(2) The senior boarding officer on each vessel enforcing the safety zone can be contacted on VHF-FM channel 13 and 16.

(c) *Regulation:* (1) In accordance with the general regulations in 165.23 of this part, entry into this zone is prohibited unless authorized by the Captain of the Port, Hampton Roads, Virginia.

(2) The operator of any vessel in the immediate vicinity of this safety zone shall:

(i) Stop the vessel immediately upon being directed to do so by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(ii) Proceed as directed by any commissioned, warrant or petty officer on board a vessel displaying a Coast Guard Ensign.

(d) *Effective date:* This regulation is effective from 6 a.m., on December 18, 1990 and shall terminate on or about December 25, 1990 unless sooner terminated by the Captain of the Port, Hampton Roads, Virginia.

Dated: December 18, 1990.

G.J.E. Thornton,

Captain, U.S. Coast Guard,

Captain of the Port Hampton Roads.

[FR Doc. 90-30002 Filed 12-21-90; 8:45 am]

BILLING CODE 4910-14-M

Saint Lawrence Seaway Development Corporation

33 CFR Part 401

Seaway Regulations and Rules: Miscellaneous Amendments

AGENCY: Saint Lawrence Seaway Development Corporation, DOT.

ACTION: Final rule; correction.

SUMMARY: The Saint Lawrence Seaway Development Corporation is correcting an error in amendments to the Seaway Regulations and Rules that appeared in the **Federal Register** on November 21, 1990 (55 FR 48597).

FOR FURTHER INFORMATION CONTACT: Marc C. Owen, Chief Counsel, Saint Lawrence Seaway Development Corporation, 400 Seventh Street, SW., Washington, DC 20590, (202) 366-0091.

SUPPLEMENTARY INFORMATION: The Saint Lawrence Seaway Development Corporation has promulgated amendments to the Seaway Regulations and Rules, which it issues jointly with the Saint Lawrence Seaway Authority of Canada. The amendments were promulgated on November 21, 1990 (55 FR 48497). Those amendments contained an error that is discussed briefly below and is corrected by this notice.

Dated: December 17, 1990.

Marc C. Owen,

Chief Counsel.

The following correction is made to Seaway Regulations and Rules: Miscellaneous Amendments published in the **Federal Register** on November 21, 1990 (55 FR 48597).

1. On page 48598, second column, § 401.19, paragraph (a), change "Seaway" to "Sewage".

[FR Doc. 90-30005 Filed 12-21-90; 8:45 am]

BILLING CODE 4910-61-M

LIBRARY OF CONGRESS

36 CFR Part 704

National Film Preservation Board; 1990 Films Selected for Inclusion in the National Film Registry

AGENCY: National Film Preservation Board, Library of Congress.

ACTION: Final rule.

SUMMARY: The Librarian of Congress is publishing the following list of films for 1990 for inclusion in the National Film Registry in the Library of Congress pursuant to section 3 of Public Law 100-446, The National Film Preservation Act of 1988, 2 U.S.C. 178. The films are published to notify the public of the Librarian's selection of twenty-five films deemed to be "culturally, historically or aesthetically significant" in accordance with Congress' mandate. The two goals of the Librarian in administering the Act are the promotion of film as an art form and the generation of more public interest in the preservation of America's film.

EFFECTIVE DATE: December 24, 1990.

FOR FURTHER INFORMATION CONTACT: Eric Schwartz, Counsel, The National Film Preservation Board, Library of Congress, Washington, DC 20540. Telephone: (202) 707-8350.

SUPPLEMENTARY INFORMATION: On August 9, 1990 (55 FR 32567), the Librarian of Congress published the list of films for 1989 for inclusion in the National Film Registry in the Library of Congress. In addition, the Librarian published final guidelines for the labeling of the first twenty-five films selected for inclusion in the Registry. The Librarian today publishes the list of the second twenty-five films for inclusion in the National Film Registry.

Background

A. Twenty-Five Films Registered in 1990 in the National Film Registry

Under section 3(a)(2)(A) of the Act, (2 U.S.C. 178b), the Librarian after consultation with the Board shall determine "which films satisfy the criteria developed pursuant to paragraph 3(a)(1)(A) of the Act, and qualify to be included in the National Film Registry" and shall select no more than twenty-five films per year for inclusion in such Registry. The criteria for the selection of films and the procedures used to enlist the public's nominations of these films were promulgated in the **Federal Register** on August 9, 1990 (55 FR 32566).

During the 1990 selection process, the National Film Preservation Board received 1,465 film titles from the general public and reduced the list to twenty-five film titles for consideration by the Librarian of Congress after meeting on July 20, 1990 in Washington, DC. Today the Librarian of Congress, Dr. James H. Billington, after consultation with the National Film Preservation Board, formally registers these films in the National Film Registry so that they can take their place with the twenty-five film titles registered in 1989.

B. Labeling Guidelines Applicability to the 1990 Films

The film labeling guidelines published on August 9, 1990 (55 FR 32567) will be applicable to these films as well on February 7, 1991. For the 1989 films, the guidelines became effective on September 24, 1990. These guidelines apply only to the films selected for inclusion in the National Registry.

In accordance with section 13 of the Act (2 U.S.C. 1781), the provisions of the Act shall not apply to any copy of a film materially altered prior to September 27, 1988, if such copy is "owned by an individual for his personal use, in the inventory of the manufacturer or packager of a videocassette or already distributed to retail or wholesale distributors of videocassettes." That section makes all of the provisions of the Act (including the labeling requirements) effective for only three years, which means that the law and all of its requirements expire on September 27, 1991.

In addition, in accordance with section 3(a)(2)(C) of the Act, (2 U.S.C. 178b), the Librarian shall "provide a seal to indicate that the film has been included in the National Film Registry as an enduring part of our national cultural heritage and such seal may then be used in the promotion of any version of such film that has not been materially altered." A seal has been designed for these purposes and can be obtained from the Library's Motion Picture, Broadcasting and Recorded Sound Division at (202) 707-5840.

For the purposes of the labeling guidelines, the staff of the Motion Picture, Broadcasting and Recorded Sound Division of the Library of Congress will answer inquiries, based upon their research, as to what the "original" (first theatrically released) version is for each of the fifty films selected. The Library, with the assistance of copyright owners and other research institutions, will compile information for the production reports, shooting scripts (including continuity scripts) and similar materials which are useful for indicating the running time and contents of the first theatrical release for each of the selected films. This descriptive information concerning the first theatrical release version will be made available to copyright owners, exhibitors, distributors and broadcasters for each of the twenty-five films. Individuals needing this information for purposes of complying with the National Film Preservation Act should write to

the following address: Motion Picture Broadcasting and Recorded Sound Division/Library of Congress/ Washington, DC 20540 or call (202) 707–5840.

Ultimately it is the responsibility of the copyright owners, exhibitors, distributors and broadcasters to decide whether or not a copy of film within their possession must carry the label or may carry the seal of the National Film Registry. However, no distributors or exhibitors of the film will be subjected to the fines at section 6 of the Act, (2 U.S.C. 178e), if in good faith, they base their decision to label or use the seal on the information provided to them by the Library of Congress.

Regulatory Flexibilty Act

With respect to the Regulatory Flexibility Act, the Librarian takes the position that this Act does not apply to Library of Congress rule-making. The Library of Congress is a part of the legislative branch. The Library of Congress is not an "agency" with the meaning of the Administrative Procedure Act of June 11, 1946, as amended (title 5, chapter of the U.S. Code, subchapter II and chapter 7). The Regulatory Flexibility Act consequently does not apply to the Library of Congress since that Act affects only those entities of the Federal Government that are agencies as defined in the Administrative Procedure Act.

List of Subjects in 36 CFR Part 704

Libraries, Motion pictures.

In consideration of the foregoing, 36 CFR part 704 is amended in the manner set forth below.

PART 704—NATIONAL FILM REGISTRY OF THE LIBRARY OF CONGRESS

1. The authority citation for 36 CFR part 704 continues to read as follows:

Authority: Pub. L. 100–446, 102 Stat. 1782 (2 U.S.C. 178).

Subpart A—Films Selected For Inclusion In The National Film Registry

2. In subpart A, § 704.21 is added to read as follows:

§ 704.21 Films Selected for Inclusion in the National Film Registry in the Library of Congress for 1990.

(a) The Librarian of Congress, Dr. James H. Billington, after consultation with the National Film Preservation Board registers these films in the National Film Registry within the Library of Congress for 1990:

(1) All About Eve (1950)
(2) All Quiet On the Western Front (1930)
(3) Bringing Up Baby (1938)
(4) Dodsworth (1936)
(5) Duck Soup (1933)
(6) Fantasia (1940)
(7) The Freshman (1925)
(8) The Godfather (1972)
(9) The Great Train Robbery (1903)
(10) Harlan County, U.S.A. (1976)
(11) How Green Was My Valley (1941)
(12) It's A Wonderful Life (1946)
(13) Killer Of Sheep (1977)
(14) Love Me Tonight (1932)
(15) Meshes Of the Afternoon (1943)
(16) Ninotchka (1939)
(17) Primary (1960)
(18) Raging Bull (1980)
(19) Rebel Without A Cause (1955)
(20) Red River (1948)
(21) The River (1937)
(22) Sullivan's Travels (1941)
(23) Top Hat (1935)
(24) The Treasure Of The Sierra Madre (1948)
(25) A Woman Under The Influence (1974)

(b) In keeping with Sec. 3(c) of the Act (2 U.S.C. 178b), the Librarian will endeavor to obtain an archival quality copy for each of these twenty-five films for the National Film Board Collection in the Library of Congress.

Dated: December 14, 1990.

Approved by:

James H. Billington,

The Librarian of Congress.

[FR Doc. 90–29863 Filed 12–21–90; 8:45 am]

BILLING CODE 1410–18–M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90–409; RM–7344]

Radio Broadcasting Services; Otterville, MO

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: This document allots Channel 299A to Otterville, Missouri, as that community's first FM broadcast service, in response to a petition filed by Otterville Broadcasting Company. *See* 55 FR 38340, September 18, 1990. The coordinates for Channel 299A are 38–43–29 and 92–54–39.

DATES: Effective February 1, 1991; the window period for filing applications for Channel 299A at Otterville will open on February 4, 1991, and close on March 6, 1991.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90–409, adopted November 29, 1990, and released December 18, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Missouri, is amended by adding Channel 299A at Otterville.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–29970 Filed 12–21–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 90–366; RM–7221]

Radio Broadcasting Services; Lynchburg, VA

AGENCY: Federal Communications Commission.

ACTION: Final rule.

SUMMARY: The Commission, at the request of Lynchburg Independent Broadcasters, Inc., substitutes Channel 261C3 for Channel 261A at Lynchburg, Virginia, and modifies its license for Station WKZZ(FM) to specify operation on the higher class channel. *See* 55 FR 33730, August 17, 1990. Channel 261C3 can be allotted to Lynchburg, Virginia, in compliance with the Commission's minimum distance separation requirements with a site restriction of 6.9 kilometers (4.3 miles) northeast of Lynchburg to accommodate petitioner's desired transmitter site. The coordinates for Channel 261C3 are North Latitude 37–28–00 and West Longitude 79–06–00.

With this action, the proceeding is terminated.

EFFECTIVE DATE: February 1, 1991.

FOR FURTHER INFORMATION CONTACT: Pamela Blumenthal, Mass Media Bureau, (202) 632-6302.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Report and Order, MM Docket No. 90-366, adopted November 19, 1990, and released December 18, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

47 CFR PART 73—[AMENDED]

1. The authority citation for part 73 continues to read as follows:

Authority: 47 U.S.C. 154, 303.

§ 73.202 [Amended]

2. Section 73.202(b), the Table of FM Allotments under Virginia, is amended by removing Channel 261A and adding Channel 261C3 at Lynchburg.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90-29971 Filed 12-21-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF TRANSPORTATION

Federal Railroad Administration

49 CFR Part 225

[Docket No. RAR-2, Notice No. 10; Regulation Identifier No. 2130-AA61]

Adjustment of Monetary Threshold for Reporting Accidents/Incidents

AGENCY: Federal Railroad Administration (FRA), Department of Transportation (DOT).

ACTION: Final rule.

SUMMARY: This final rule increases from $5,700 to $6,300 the monetary threshold for reporting railroad accidents/incidents involving property damage that occur during the calendar years 1991 and 1992. This action is needed to ensure that the FRA reporting requirements reflect the impact of inflation since the reporting threshold was last computed in 1988.

EFFECTIVE DATE: This rule becomes effective on January 1, 1991.

FOR FURTHER INFORMATION CONTACT:

(1) *Principal Program Person:* Gloria D. Swanson, Office of Safety, RRS-21, Federal Railroad Administration, Washington, DC 20590. Telephone (202) 366-0538.

(2) *Principal Attorney:* Billie Stultz, Office of Chief Counsel, RCC-30, Federal Railroad Administration, Washington, DC 20590. Telephone (202) 366-0635.

SUPPLEMENTARY INFORMATION:

Background

Section 225.19(c) of title 49, Code of Federal Regulations, provides that the dollar figure that constitutes the reporting threshold for railroad accidents/incidents will be adjusted every two years, in accordance with the procedures outlined in appendix A to part 225, to reflect cost increases.

New Reporting Threshold

Two years have passed since the accident/incident reporting threshold was last revised. Consequently, FRA has recomputed the threshold, as required by § 225.19(c), based on increased costs for labor and material. FRA has determined that the current reporting threshold of $5,700 should be increased to $6,300, and §§ 225.5 and 225.19 are being amended accordingly. Appendix A has also been amended to reflect the most recent calculations and the procedures used to determine the new threshold.

Environmental Impact

FRA has evaluated this rule in accordance with its procedures for ensuring full consideration of the potential environmental impacts of FRA actions, as required by the National Environmental Policy Act and related directives. This notice meets the criteria that establish this as a non-major action for environmental purposes.

Executive Order 12291 and Department of Transportation Regulatory Policies and Procedures

This rule has been evaluated in accordance with existing regulatory policies and procedures. It does not constitute a "major" rule under Executive Order 12291 and does not constitute a "significant" rule under the Department of Transportation regulatory policies and procedures (44 FR 11034; February 26, 1979). This rule will not have any significant direct or indirect economic impact on any entity. For these reasons, further regulatory evaluation is not warranted.

Regulatory Flexibility Act

FRA certifies that this rule will not have a significant impact on a substantial number of small entities. There are no direct or indirect economic impacts for small units of government, business, or other organizations.

Federalism Implications

This rule will not have substantial effects on the states, on the relationship between the national government and the states, or on the distribution of power and responsibilities among the various levels of government. Thus, in accordance with Executive Order 12612, preparation of a Federalism Assessment is not warranted.

Paperwork Reduction Act

No additional public reporting burden is imposed by this rule; therefore, a Paperwork Reduction Act analysis is not necessary.

Notice and Comment Procedures

FRA finds that this rule adjusts the monetary reporting threshold for accidents/incidents to account for inflation by using an arithmetic formula already established by a long-standing regulation (49 CFR 225.19). FRA further finds that both the current cost data inserted into this pre-existing formula and the original cost data that it replaces were obtained from various reliable sources, including the Interstate Commerce Commission, the Association of American Railroads, and the American Railway Engineering Association. FRA further finds that this rule imposes no additional burden on any person, but rather provides a benefit by permitting the valid comparison of accident data over time. FRA concludes, therefore, that notice and comment procedures are impracticable, unnecessary, and contrary to the public interest. As a consequence, FRA is proceeding directly to this final rule.

List of Subjects in 49 CFR Part 225

Railroad safety.

For reasons set out in the preamble, part 225 of chapter II of title 49 of the Code of Federal Regulations is amended as follows:

PART 225—[AMENDED]

1. The authority citation for part 225 continues to read as follows:

Authority: 45 U.S.C. 38, 42, 43, and 43a, as amended; 45 U.S.C. 431, 437, and 438, as

amended; Pub. L. 100-342; and 49 CFR 1.49 (c) and (m).

2. By revising § 225.5(b)(2) and republishing the introductory text of the section and of paragraph (b) to read as follows:

§ 225.5 Definitions.

As used in this part—

* * * * *

(b) *Accident/Incident* means:

* * * * *

(2) Any collision, derailment, fire, explosion, act of God, or other event involving operation of railroad on-track equipment (standing or moving) that results in more than $6,300 in damages to railroad on-track equipment, signals, track, track structures, and roadbed;

* * * * *

3. By revising the second sentence in § 225.19(b) and by revising the first, third, and fifth sentences of § 225.19(c) to read as follows:

§ 225.19 Primary groups of accidents/incidents

* * * * *

(b) *Group I—Rail-Highway Grade Crossing.* * * * In addition, whenever a rail-highway grade crossing accident/incident results in more than $6,300 damages to railroad on-track equipment, signals, track, track structures, or roadbed, that accident/incident must be reported to the FRA on Form FRA F6180.54. * * *

(c) *Group II—Rail Equipment.* Rail equipment accidents/incidents are collisions, derailments, fires, explosions, acts of God, or other events involving the operation of railroad on-track equipment, signals, track, track equipment (standing or moving) that result in more than $6,300 in damages to railroad on-track equipment, signals, tracks, track structures, or roadbed, including labor costs and all other costs for repairs or replacement in kind. * * * If the property of more than one railroad is involved in an accident/incident, the $6,300 threshold is calculated by including the damages suffered by all of the railroads involved. * * * The $6,300 reporting threshold will be reviewed periodically and will be adjusted in increments of $100 every 2 years in accordance with the procedures outlined in appendix A of this part.

* * * * *

4. By revising appendix A to read as follows:

Appendix A to Part 225—Procedure for Determining Reporting Threshold

1. Wage figures used for track direct labor rates will be based on the "[a]verage straight time rate" shown in the "Recapitulation by Group of Employees," for Group 300 Maintenance of Way Structures Employees. This information appears in the most recent annual edition (Year 1989) of "Statement A-300 of the Interstate Commerce Commission, Bureau of Accounts, Wage Statistics of Class I Railroads in the United States."

2. Wage figures used for mechanical direct labor rates will be based on the "[a]verage straight time rate" shown in the "Recapitulation by Group of Employees," for Group 400 Maintenance of Equipment and Stores Employees. This information appears in the most recent annual edition (Year 1989) of "Statement A-300 of the Interstate Commerce Commission, Bureau of Accounts, Wage Statistics of Class I Railroads in the United States."

3. Fringe benefit surcharges will be added to the average straight time rates for mechanical and track employees based on the Railroad Cost Index data developed for the Interstate Commerce Commission under the provisions of 49 CFR part 1102. This information was published in summarized form in the September 24, 1984 edition of the **Federal Register** (49 FR 37481).

4. To calculate the index number for mechanical labor, divide the present (1990) mechanical wage rate of $23.56 by the previous (1988) mechanical wage rate of $21.82. The result is a mechanical labor index number of 1.08 for 1990.

5. The track labor index number is calculated by dividing the present (1990) track wage rate of $22.74 by the previous (1988) track wage rate of $21.12. The result is a track labor index number of 1.08 for 1990.

6. Calculation of the labor index number is as follows: [(track labor index number) 1.08×.20] +[(mechanical labor index number) 1.08 ×.80]=labor index number of 1.08.

7. The mechanical material index number is calculated by first totaling the present (1990) cost of the following mechanical materials:

Quantity	Description	1988	1990
8	33" CS wheels	$1,682	$2,136
8	6by 11" roller bearings	1,204	1,524
4	Roller bearing axles	2,030	2,358
4	6by 11" roller bearing truck sides (750 lbs.)	3,027	3,891
2	6by 11" truck bolsters (1,060 lbs.)	2,092	2,466
2	E couplers	589	648
4	Brake beams	321	633
1	AB cylinder	95	96
1	AB reservoir	342	387
1	ABD control valve	1,252	1,218
500 lbs.	Steel bar	610	560
1,000 lbs	Steel sheets	1,220	1,120
1,000 lbs	Steel plates	1,220	1,120
8	Brake shoes	46	99
8	Roller bearing adapters	131	127
24	Outer coil springs	192	220
800	Board feet hardwood lumber	392	496
1	Traction motor	43,000	48,200
60 feet	1¼" brake pipe	72	72
1	Hand brake	256	298
Total mechanical material		59,773	67,669

The mechanical material index number is determined by dividing the present (1990) total cost for these mechanical materials ($67,669) by the previous (1988) total cost for mechanical materials ($59,773). The result is 1.13.

8. The track material index number is calculated by first totaling the present (1990) cost of the following track materials:

Quantity	Description	1988	1990
4,500	Ties, wooden	$112,500	$135,000
250 tons	Rail	145,000	152,500

Quantity	Description	1988	1990
90 tons	Tie plates	52,200	52,200
27,000	Spikes (5.8 tons)	4,408	4,408
800	Joint bars (25.4 tons)	27,000	27,000
2,000	Track bolts	3,200	3,400
1	Frog	4,500	4,500
1	Switch	4,900	6,500
Total track material		353,708	385,508

The track material index number is determined by dividing the present (1990) total cost for these track materials ($385,508) by the previous (1988) total cost for track materials ($353,708). The result is 1.09.

9. Calculation of the material index number is as follows: [(track material index number) 1.09 × .20] + [(mechanical material index number) 1.13 × .80] = material index number of 1.12.

10. Calculation of the threshold index number is as follows: [(labor index number) 1.08×.40]+ [(material index number) 1.12×.60] =threshold index number of 1.10.

11. In order to calculate the new reporting threshold, multiply the existing reporting threshold $5,700 by the threshold index number of 1.10. The result is $6,270. This result, when rounded to the nearest $100.00 is the new accident/incident reporting threshold figure of $6,300.

Issued in Washington, DC on December 18, 1990.

Gilbert E. Carmichael,

Administrator.

[FR Doc. 90-30070 Filed 12-21-90; 8:45 am]

BILLING CODE 4910-06-M

DEPARTMENT OF COMMERCE

National Oceanic and Atmospheric Administration

50 CFR Part 251

[Docket No. 900235-0305]

Financial Aid Program Procedures; Fishery for Salmon in Alaska

AGENCY: National Marine Fisheries Service (NMFS), NOAA, Commerce.

ACTION: Final rule.

SUMMARY: NOAA issues this final rule to end the conditional fishery status for salmon in Alaska. The result will remove restrictions on the use of financial aid programs in said fishery. Many interested parties, including the Governor of Alaska, have urged this action.

EFFECTIVE DATE: January 23, 1991.

FOR FURTHER INFORMATION CONTACT: Michael L. Grable (Financial Services Division, NMFS) at 301-427-2393.

SUPPLEMENTARY INFORMATION:

Background

This rulemaking removes section 251.21 (Fishery for salmon in Alaska) from subpart B (Conditional Fisheries) of 50 CFR part 251.

Regulations governing NOAA's financial aid programs (50 CFR part 251) restrict use of the programs in fisheries where their normal availability would be inconsistent "* * * with the wise use of the fisheries resources and with the development, advancement, management, conservation, and protection of the fisheries resources." A fishery so restricted is a conditional fishery. The Alaska salmon fishery has been a conditional fishery since September 23, 1974.

The State of Alaska has, since 1974, managed harvesting capacity in this fishery by combining a limitation on the total number of participants with restrictions on fishing times, areas, and gear. Alaska's Governor has stated that the State's limited entry plan is sufficient to properly manage the Alaska salmon fishery. The Governor's letter, urging NOAA to end this conditional fishery, stated in part: "Since the number of entry permits is fixed, use of these programs could not increase the number of vessels in the salmon fishery. This action simply allows fishermen to receive the same benefit from these Federal programs that other fishermen have enjoyed for years. It will encourage the upgrading of vessels and provide for more safe and efficient operations."

The fisheries financing programs restricted by the conditional fisheries rules are the Fisheries Obligation Guarantee and Fishing Vessel Capital Construction Fund programs.

The Fisheries Obligation Guarantee Program (Program), codified in 50 CFR part 255, gives the fishing industry access to the normal private market for long-term debt capital. This program provides financing or refinancing of the cost of constructing, reconstructing, reconditioning, or purchasing fishing vessels and fisheries shoreside facilities. The Program generates lending capital in the private market by providing a Federal guarantee of private credits. The Program is self-supporting.

The Fishing vessel Capital Construction Fund Program, codified in 50 CFR part 259, provides tax deferrals that help the fishing industry fund the equity portion of its long-term capital needs. Taxation may be deferred on fishing income reserve in a Capital Construction Fund for fishing vessel construction, reconstruction, or acquisition costs. All deferred taxes are eventually recaptured by reductions in the depreciation basis, for tax purposes, of vessels funded under this program.

Conditional fishery status makes new fishing vessel construction ineligible under both programs unless the new vessel replaces equivalent harvesting capacity (see regulations at 50 CFR 255.5(c) and 50 CFR 259.32).

Advance notice of proposed rulemaking for this change was published in the **Federal Register** on March 7, 1990 (55 FR 8157). This was followed by a notice of proposed rulemaking published in the **Federal Register** on August 8, 1990 (55 FR 32277).

Comments and Responses

Two hundred and fifty parties responded in writing to the advance notice of proposed rulemaking and 14 to the notice of proposed rulemaking. The advance notice of proposed rulemaking requested that comments take into consideration the evaluation criteria listed in 50 CFR 251.9 as well as the effect of removing the conditional status from the Alaska Salmon fishery on other West Coast salmon fisheries. All supported ending this conditional fishery. The most frequent comments received were that the State of Alaska's long-standing salmon fishery management program is sufficient to properly manage this fishery, the State's entry limitation plan prevents additional harvesting capacity, the fishery's conditional fishery status is inconsistent with the safety and stability of the fishing fleet, and the vessel replacement requirement associated with conditional fishery status imposes a hardship that serves no useful purpose.

After considering these comments as well as the evaluation criteria, NOAA has decided to proceed with final rulemaking without a change in the

proposed rule. The State of Alaska's salmon fishery management program seems sufficient to manage, protect, and conserve the salmon fishery resource. The State's plan fixes the amount and type of fishing gear that can be operated, who can operate it, and when and for how long it can be operated. Fishing intensity is adjusted annually, on the basis of predicted resource availability and predicted catch, to provide for desired resource escapement.

Effect of Final Rule

This rule allows both the Fisheries Obligation Guarantee and Capital Construction Fund Programs to be used without regard to (a) Whether fishing vessels newly constructed for this fishery replace other ones already in this fishery or (b) whether the vessels being reconstructed, reconditioned, acquired, or purchased under the applicable program have operated in this fishery for the requisite time period (see regulations at 50 CFR 255.5(c) and CFR 259.32).

Measures contained in this final rulemaking are not retroactive and do not apply to any transaction occurring before the rule's effective date. Any transaction occurring before that date is bound by the present conditional fisheries restrictions in effect before the effective date of this final rule.

Classification

This action is categorically excluded from the requirement to prepare an environmental assessment by NOAA Directive 02–10.

The Under Secretary for Oceans and Atmosphere, NOAA, determined that this final rule is not a "major rule" requiring a regulatory impact analysis under E.O. 12291 because it will not result in an annual effect on the economy of $100 million or more; will not result in a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographical regions; and will not result in a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of U.S.-based enterprises to compete with foreign-based enterprises in domestic or export markets.

The General Counsel of the Department of Commerce certified to the Small Business Administration that this final rule will not have a significant economic impact on a substantial number of small entities because it relates to financial assistance programs in which participation is voluntary and does not impose any cost, economic burden, or reporting burden on the industry. As a result, a regulatory flexibility analysis was not prepared.

This rule does not contain a collection-of-information requirement for purposes of the Paperwork Reduction Act.

This rule does not contain policies with federalism implications sufficient to warrant preparation of a federalism assessment under E.O. 12612.

List of Subjects in 50 CFR Part 251

Administrative practice and procedures, Fisheries, Fishing vessels, Natural resources, Loan programs-business.

Dated: December 17, 1990.

William W. Fox, Jr.,

Assistant Administrator for Fisheries, National Marine Fisheries Service.

For the reasons set out in the preamble, 50 CFR 251 is amended as follows:

PART 251—FINANCIAL AID PROGRAM PROCEDURES

1. The authority citation for part 251 is revised to read as follows:

Authority: Section 4 of the Fish and Wildlife Act of 1956, as amended (16 U.S.C. 742); title XI, Merchant Marine Act, 1936, as amended (46 U.S.C. 1271–1279); section 607, Merchant Marine Act, 1936, as amended (46 U.S.C. 1177); National Environmental Policy Act (42 U.S.C. 4321–4347); and Reorganization Plan No. 4 of 1970, 86 Stat. 909.

§ 251.21 [Removed and Reserved]

2. Section 251.21 is removed and reserved.

[FR Doc. 90–29978 Filed 12–21–90; 8:45 am]
BILLING CODE 3510-22-M

Proposed Rules

Federal Register
Vol. 55, No. 247
Monday, December 24, 1990

This section of the FEDERAL REGISTER contains notices to the public of the proposed issuance of rules and regulations. The purpose of these notices is to give interested persons an opportunity to participate in the rule making prior to the adoption of the final rules.

DEPARTMENT OF THE TREASURY

Internal Revenue Service

26 CFR Part 1

[PS-4-73]

RIN 1545-AC37

One Class of Stock Requirement

AGENCY: Internal Revenue Service, Treasury.

ACTION: Notice of public hearing on proposed regulations.

SUMMARY: This document provides notice of a public hearing on proposed regulations which provide guidance relating to the requirement that a small business corporation have only one class of stock.

DATES: The public hearing will be held on Friday, February 15, 1991, beginning at 1 p.m. Requests to speak and outlines of oral comments must be received by Friday, February 1, 1991.

ADDRESSES: The public hearing will be held in the IRS Auditorium, Seventh Floor, 7400 Corridor, Internal Revenue Building, 1111 Constitution Avenue, NW., Washington, DC. Requests to speak and outlines of oral comments should be submitted to the Internal Revenue Service, P.O. Box 7604, Ben Franklin Station, Attn: CC:CORP:T:R [PS-4-73], Room 4429, Washington, DC 20044.

FOR FURTHER INFORMATION CONTACT: Bob Boyer of the Regulations Unit, Assistant Chief Counsel (Corporate), 202-566-3935, (not a toll-free number).

SUPPLEMENTARY INFORMATION: The subject of the public hearing is a notice of proposed rulemaking which proposes additions to part 1 of title 26 of the Code of Federal Regulations ("CFR") under section 1361 of the Code. The proposed regulations provide guidance under section 1361 relating to the requirement that a small business corporation only have one class of stock. Changes to the applicable law were made by the Subchapter S Revision Act of 1982. The proposed regulations appeared in the **Federal Register** for October 5, 1990 (55 FR 40870).

A number of written comments on the proposed regulations are under consideration by the Internal Revenue Service and the Treasury Department. Further comments are invited with respect to the appropriate scope of the regulations and alternatives to the proposed rules, and are specifically encouraged with respect to the nonconforming distribution rules, option rules and effective date provisions. We also invite comments concerning the desirability of and authority for sanctions for noncompliance with these rules other than termination of S corporation status.

The rules of § 601.601 (a)(3) of the "Statement of Procedural Rules" (26 CFR part 601) shall apply with respect to the public hearing. Persons who have submitted written comments within the time prescribed in the notice of proposed rulemaking and who also desire to present oral comments at the hearing on the proposed regulations should submit not later than February 1, 1991, an outline of the oral comments/testimony to be presented at the hearing and the time they wish to devote to each subject.

Each speaker (or group of speakers representing a single entity) will be limited to 10 minutes for an oral presentation exclusive of the time consumed by the questions from the panel for the government and answers to these questions.

Because of controlled access restrictions, attendees cannot be admitted beyond the lobby of the Internal Revenue Building until 12:45 p.m.

An agenda showing the scheduling of the speakers will be made after outlines are received from the persons testifying. Copies of the agenda will be available free of charge at the hearing.

By direction of the Commissioner of Internal Revenue:

Cynthia E. Grigsby,

Alternate Federal Register Liaison Officer, Assistant Chief Counsel (Corporate).

[FR Doc. 90-30084 Filed 12-19-90; 1:51 pm]

BILLING CODE 4830-01-M

FEDERAL COMMUNICATIONS COMMISSION

47 CFR Part 73

[MM Docket No. 90-617, RM-7564]

Radio Broadcasting Services; Tahlequah, OK

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: The Commission requests comments on a petition by Demaree Communications, Inc., seeking the substitution of Channel 269C3 for Channel 269A at Tahlequah, Oklahoma, and the modification of the license of Station KEOK-FM to specify operation on the higher powered channel. Channel 269C3 can be allotted to Tahlequah in compliance with the Commission's minimum distanced separation requirements with a site restriction of 15.4 kilometers (9.6 miles) south to avoid short-spacings to Stations KISK, Channel 270C2, Lowell, Arkansas, and KBIX-FM, Channel 271A, Wagoner, Oklahoma. The coordinates for Channel 269C3 at Tahlequah are North Lattitude 35-46-56 and West Longitude 94-59-15. In accordance with § 1.420(g), we will not accept competing expressions of interest in use of Channel 269C3 at Tahlequah or require the petitioner to demonstrate the availability of an additional equivalent class channel for use by such parties.

DATES: Comments must be filed on or before February 8, 1991, and reply comments on or before February 25, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Paul S. Demaree, Demaree Communications, 517 South Muskogee Avenue, P.O. Box 719, Tahlequah, Oklahoma 74465 (Petitioner).

FOR FURTHER INFORMATION CONTACT: Leslie K. Shapiro, Mass Media Bureau, (202) 634-6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90-617, adopted December 7, 1990, and released December 18, 1990. The full text of this Commission decision is available

for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractor, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is not longer subject to Commission consideration of court review, *all ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–29973 Filed 12–21–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–615, RM–7552]

Radio Broadcasting Services; Adams, WI

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Karle Roekle proposing the allotment of FM Channel 291A to Adams, Wisconsin, as that community's first local service. The coordinates for Channel 291A are 43–57–06 and 89–49–00.

DATES: Comments must be filed on or before February 8, 1991, and reply comments on or before February 25, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: Karle Roekle, President, Jefcom Mobile Radio, 408 Friendship, Wisconsin 53934.

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–615, adopted November 29, 1990, and released December 18, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Beverly McKittrick,

Assistant Chief, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–29974 Filed 12–21–90; 8:45 am]

BILLING CODE 6712–01–M

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47 CFR Part 73

[MM Docket No. 90–616; RM–7554]

Radio Broadcasting Services; Cold Spring and Litchfield, MN

AGENCY: Federal Communications Commission.

ACTION: Proposed rule.

SUMMARY: This document requests comments on a petition filed by Litchfield Broadcasting Corp., licensee of Station KMXK–FM, Channel 235C2, Litchfield, Minnesota, proposing the change of community of license for Channel 235C2 at Litchfield to Cold Spring, and modification of its station's license to specify Channel 235C2 at Cold Spring. The coordinates for Channel 235C2 at Cold Spring are 45–23–53 and 94–25–15.

DATES: Comments must be filed on or before February 8, 1991, and reply comments on or before February 25, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554. In addition to filing comments with the FCC, interested parties should serve the petitioner, or its counsel or consultant, as follows: John F. Garziglia, ⅛Howard J. Barr, Pepper & Corazzini, 200 Montgomery Building, 1776 K Street, NW., Washington, DC 20006, (Counsel for the petitioner).

FOR FURTHER INFORMATION CONTACT: Kathleen Scheuerle, Mass Media Bureau, (202) 634–6530.

SUPPLEMENTARY INFORMATION: This is a synopsis of the Commission's Notice of Proposed Rule Making, MM Docket No. 90–616, adopted December 7, 1990, and released December 18, 1990. The full text of this Commission decision is available for inspection and copying during normal business hours in the FCC Dockets Branch (Room 230), 1919 M Street, NW., Washington, DC. The complete text of this decision may also be purchased from the Commission's copy contractors, International Transcription Service, (202) 857–3800, 2100 M Street, NW., Suite 140, Washington, DC 20037.

Provisions of the Regulatory Flexibility Act of 1980 do not apply to this proceeding.

Members of the public should note that from the time a Notice of Proposed Rule Making is issued until the matter is no longer subject to Commission consideration or court review, all *ex parte* contacts are prohibited in Commission proceedings, such as this one, which involve channel allotments. See 47 CFR 1.1204(b) for rules governing permissible *ex parte* contacts.

For information regarding proper filing procedures for comments, see 47 CFR 1.415 and 1.420.

List of Subjects in 47 CFR Part 73

Radio broadcasting.

Federal Communications Commission.

Andrew J. Rhodes,

Acting Chief, Allocations Branch, Policy and Rules Division, Mass Media Bureau.

[FR Doc. 90–29972 Filed 12–21–90; 8:45 am]

BILLING CODE 6712–01–M

47 CFR Part 73

[MM Docket No. 87-267, DA 90-1828]

Broadcast Services; AM Technical Assignment Criteria

AGENCY: Federal Communications Commission.

ACTION: Proposed rule; further extension of reply comment period.

SUMMARY: The Commission further extends the time for filing reply comments in its proceeding reviewing AM technical assignment criteria from December 17, 1990, to January 17, 1991. The Notice of Proposed Rule Making in this proceeding (FR Doc. 90-18020) may be found at 55 FR 31607 (August 3, 1990). This action is being taken due to the volume and complexity of the comments filed in response to the Notice.

DATES: Reply comments are now due on January 17, 1991.

ADDRESSES: Federal Communications Commission, Washington, DC 20554.

FOR FURTHER INFORMATION CONTACT: James E. McNally, Mass Media Bureau (202) 632-9660.

SUPPLEMENTARY INFORMATION:

Order Extending Time for Filing Reply Comments to Notice of Proposed Rule Making

Adopted: December 13, 1990

Released: December 14, 1990.

In the matter of Review of the Technical Assignment Criteria for the AM Broadcast Service.

By the Chief, Mass Media Bureau.

1. On July 18, 1990, the Commission released a Notice of Proposed Rule Making ("MPRM") in MM Docket 87-267 that proposed to revise the AM technical standards to bring about a reduction of interference in the existing AM band and to implement the expanded AM band (1605-1705 kHz) which became available for use on July 1, 1990. The deadlines for filing comments and reply comments were, respectively, October 15, 1990 and November 14, 1990. On October 4, 1990, the Commission granted a request by the Association of Federal Communications Consulting Engineers to extend these dates to November 16, 1990, and December 17, 1990, due to the complexity of the proposals contained in the NPRM.

2. On December 10, 1990, the firm of du Treil, Lundin & Rackley, Inc. (du Treil), consulting engineers, requested an additional 30 day extension of the reply comment period. du Treil finds the 30 day reply period too restrictive for researching, copying and reviewing the comments. du Treil cites the complexity and diversity of this rulemaking proceeding, as evidenced by the comments they have already reviewed. A letter in support of the du Treil petition was filed December 11, 1990, by the firm of Cohen, Dippell and Everist, P.C., who note the importance of the rulemaking to the AM industry and the importance to the Commission of full consideration of technical comments.

3. A review by Commission staff indicates that nearly 100 comments have filed in response to the NPRM, many of which are quite extensive in scope, and some of which contain very complex engineering analyses of the various technical issues raised in the rulemaking. We can appreciate the difficulty which parties preparing reply comments might encounter in reviewing and evaluating this material. While we are reluctant to further delay action in this proceeding, and for that reason granted only 30-day, rather than 60-day, comment and reply comment extensions in our Order of October 4, 1990, we are nevertheless persuaded that the extension now under consideration should be approved.

4. Accordingly, *it is ordered*, That the request to extend the reply comment date filed by du Treil, Lundin & Rackley, Inc. is granted. The date for filing reply comments in the NPRM is extended to January 17, 1991. No further extension of this date is contemplated.

5. This action is taken pursuant to authority found in sections 4(i) and 303(r) of the Communications Act of 1934, as amended, and §§ 0.204(b), 0.283, 1.45 and 1.46 of the Commission's Rules.

Federal Communications Commission.

Roy J. Stewart,

Chief, Mass Media Bureau.

[FR Doc. 90-30091 Filed 12-21-90; 8:45 am]

BILLING CODE 6712-01-M

DEPARTMENT OF THE INTERIOR

Fish and Wildlife Service

50 CFR Part 17

Endangered and Threatened Wildlife and Plants; Notice of 90-Day Findings on Petitions to List the Delta Smelt and Delhi Sands Flower-Loving Fly as Endangered

AGENCY: Fish and Wildlife Service, Interior.

ACTION: Notice of petition findings.

SUMMARY: The U.S. Fish and Wildlife Service (Service) announces 90-day findings for petitions to add the delta smelt (*Hypomesus transpacificus*), and the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*), both in California, to the List of Endangered and Threatened Wildlife. The Service finds that both petitions have presented substantial information indicating that the requested actions may be warranted. Through issuance of this notice, the Service is commencing formal reviews of the status of these species.

DATES: The findings announced in this notice were made on October 23 (Delta smelt) and October 30 (Delhi Sands flower-loving fly) 1990. Comments and materials related to these petition findings may be submitted to the Field Supervisors at the addresses listed below until further notice.

ADDRESSES: Comments and materials concerning the delta smelt petition finding should be submitted to the Field Supervisor, Sacramento Field Station, U.S. Fish and Wildlife Service, 2800 Cottage Way, Room E-1803, Sacramento, California 95825-1846. Comments and materials concerning the Delhi Sands flower-loving fly petition finding should be submitted to the Field Supervisor, Laguna Niguel Field Station, U.S. Fish and Wildlife Service, 24000 Avila Road, Laguna Niguel, California, 92677. The petitions, findings, supporting data, and comments are available for public inspection, by appointment, during normal business hours at the above addresses.

FOR FURTHER INFORMATION CONTACT: A. Keith Taniguchi (delta smelt) at the above Sacramento, California address, (916) 978-4866 or FTS 460-4866, or Richard Zembal (Delhi Sands flower-loving fly) at the above Laguna Niguel, California address, (714) 643-4270 or FTS 796-4270.

SUPPLEMENTARY INFORMATION:

Background

Section 4(b)(3)(A) of the Endangered Species Act (Act), (16 U.S.C. 1531 *et seq.*), requires that the Service make a finding on whether a petition to list, delist, or reclassify a species presents substantial scientific or commercial information to indicate that the petitioned action may be warranted. To the maximum extent practicable, this finding is to be made within 90 days of the receipt of the petition, and the finding is to be published promptly in the Federal Register.

Dr. Don C. Erman, President-Elect of the California-Nevada Chapter of the American Fisheries Society, submitted a petition to list the delta smelt (*Hypomesus transpacificus*) as an endangered species with critical habitat

in California. The petition, dated June 26, 1990, was received by the Service on June 29, 1990.

The delta smelt is a small fish endemic to the upper Sacramento-San Joaquin estuary in the San Francisco Bay area of California. The petition and supporting documentation stated that the delta smelt has become critically depleted, and requires protection under the Endangered Species Act because of increasing diversion of freshwater from its estuarine habitat, coupled with recent drought conditions in central California.

The delta smelt is adapted to living in the seawater-freshwater mixing zone of salt and brackish marshes where salinities typically are 0 to 2 grams per liter. All life stages of this species feed only on zooplankton. The annual export of 6 million acre-feet of freshwater away from the estuary by Federal, State and private projects has allowed the intrusion of higher salinity seawater to the marshes. Because of higher salinities, the delta smelt has lost spawning and larvae nursery areas in Suisun Bay and Suisun Marsh, and is now forced to spawn in less favorable river channel habitat. Monitoring studies conducted by the California Department of Fish and Game (Stevens et al 1990), and the University of California, Davis (Moyle and Herbold In Press), have shown a tenfold population decline from 2,000,000, two decades ago to an estimated 200,000 today. A sharp population decline occurred during the last six years, mainly as a result of increased freshwater exports coupled with four years of drought conditions. Other factors that may be contributing to the decline of this species include high toxin levels, displacement of native copepods (a major dietary component) by exotics, and competition by an invasive species of clam (*Potamocorbula amurensis*) (Moyle et al 1989).

Based on the best scientific and commercial information presently available, the Service has found that the petition to list the delta smelt as endangered presents substantial information indicating that the requested action may be warranted. In the January 6, 1989 vertebrate notice of review (54 FR 554), the species was classified as a category 1 candidate, meaning that the Service now has sufficient information in its files to warrant the preparation of a proposal to list the species. As part of a formal review of the status of the delta smelt, the Service would appreciate any additional data, comments, and suggestions from the public, other concerned governmental agencies, the scientific community, industry, or any other interested party concerning the status of this species.

On July 19, 1990, the Service received a letter requesting activation of a petition from Mr. Greg Ballmer of the University of California, Riverside, to list the Delhi Sands flower-loving fly (*Rhaphiomidas terminatus abdominalis*) as an endangered species. Mr. Ballmer submitted taxonomic, biological, distributional, and historic information and cited several scientific articles in support of this petition. The petition and accompanying data describe this subspecies as imperiled due to a 97 to 98 percent reduction of its range and imminent threats to the remaining population sites.

The only other member of this species, *Rhaphiomidas terminatus terminatus*, inhabited coastal dunes of Los Angeles County in California and is thought to be extinct. The taxon inhabits fine sandy soils of the Delhi Series. These soils once may have covered approximately 40 square miles in western Riverside and San Bernardino Counties but were used extensively for agriculture and more recently, for housing and commercial developments. Today, less than 1,000 acres of these soils remain, all in southwestern San Bernardino County, and only four known occupied habitat parcels exist. Current populations occupy approximately 2.5 percent of the remaining Delhi series soils and individuals have been observed only in very low densities. Habitat loss, fragmentation, and degradation may lead to the quick disappearance of this taxon if current trends continue. The dominance of nonnative plants and sparsity of natives in suitable habitat may be responsible for the clumping of specimens recently observed.

The plight of this taxon has only been realized recently. Consequently, it has not been included in past Notices of Review. A petition to list this subspecies was also submitted by Mr. Ballmer to the California Department of Fish and Game.

Based on the best scientific and commercial information currently available, the Service finds that the petition to list the Delhi Sands flower-loving fly as endangered has presented substantial information to indicate that the requested action may be warranted.

References Cited

Moyle, P. B. and B. Herbold. In Press. Life history and status of delta smelt in the Sacramento-San Joaquin estuary, California. Transactions of the American fisheries Society.

Moyle, P. B., J. E. Williams, and E. D. Wikramanayake. 1989. Fish species of special concern of California. California Department of Fish and Game, Final Report, Contract No. 7337.

Stevens, D. E., L. W. Miller, and B. C. Bolster. 1990. Report to the Fish and Game Commission: A status review of the delta smelt (*Hypomesus transpacificus*) in California. California Department of Fish and Game, Candidate Species Status Report 90–2.

Author

This notice was prepared by A. Keith Taniguchi, Richard Zembal (see **ADDRESSES** section), and Leslie Propp, Portland Regional Office, U.S. Fish and Wildlife Service, Eastside Federal Complex, 911 N.E. 11th Avenue, Portland, Oregon 97232 (503/231–6131).

List of Subjects in 50 CFR Part 17

Endangered and threatened species, Exports, Imports, Reporting and Recordkeeping requirements, and Transportation.

Authority: 16 U.S.C. 1361–1407; 16 U.S.C. 1531–1544; 16 U.S.C. 4201–4245; Pub. L. 99–625, 100 Stat. 3500; unless otherwise noted.

Dated: December 11, 1990.

Bruce Blanchard,

Acting Director, U.S. Fish and Wildlife Service.

[FR Doc. 90–30066 Filed 12–21–90; 8:45 am]

BILLING CODE 4310–55–M

Notices

Federal Register
Vol. 55, No. 247
Monday, December 24, 1990

This section of the FEDERAL REGISTER contains documents other than rules or proposed rules that are applicable to the public. Notices of hearings and investigations, committee meetings, agency decisions and rulings, delegations of authority, filing of petitions and applications and agency statements of organization and functions are examples of documents appearing in this section.

DEPARTMENT OF AGRICULTURE

Farmers Home Administration

Availability of Housing Funds

AGENCY: Farmers Home Administration, USDA.

ACTION: Notice.

SUMMARY: The Farmers Home Administration (FmHA) announces the availability of housing funds for Fiscal Year (FY) 1991. This action is taken due to legislation which requires that FmHA publish in the **Federal Register** notice of the availability of any housing assistance. The intended effect is to comply with Public Law 101–235 and make the public aware of housing funds available through FmHA.

DATES: December 24, 1990.

FOR FURTHER INFORMATION CONTACT: David J. Villano, Chief, Rural Rental Housing Branch, Multi-Family Housing Processing Division, FmHA, USDA, room 5337, South Agriculture Building, Washington, DC 20250, telephone (202) 382–1608 (this is not a toll free number).

SUPPLEMENTARY INFORMATION:

Programs Affected

These programs/activities are listed in the Catalog of Federal Domestic Assistance under Nos:

10.405 Farm Labor Housing Loans and Grants
10.410 Low Income Housing Loans
10.411 Rural Housing Site Loans
10.415 Rural Rental Housing Loans
10.417 Very Low Income Housing Repair Loans and Grants
10.420 Rural Self-Help Housing Technical Assistance Grants
10.427 Rural Rental Assistance Payments
10.433 Housing Preservation Grants

Discussion of Notice

7 CFR, part 1940, subpart L contains the "Methodology and Formulas for Allocation of Loan and Grant Program Funds." The following guidance has been provided to FmHA field offices on Fiscal Year 1991 appropriations and access to funds. The guidance is separated between assistance available in our Multi and Single Family Housing Programs:

Multi-Family Housing (MFH)

I. General

A. This provides MFH allocations available to individual States for Fiscal Year (FY) 1991. Allocation computations have been performed in accordance with §§ 1940.575, 1940.576, and 1940.578 of subpart L of part 1940 of this chapter. The transition formula is not used.

B. State Directors are encouraged to notify nonprofit and public housing agencies of the availability of MFH loan and grant funds.

c. In the State of Texas, Arizona, New Mexico and California, certain colonias are now eligible for MFH assistance and may have priority for funding. Until further guidance is published on colonias, the State Director should contact the National Office when a preapplication for assistance in a colonias is received.

D. MFH loan and grant levels authorized for FY 91 are as follows:

Section 515 Rural Rental Housing (RRH) Loans	$573,900,000
Section 514 Farm Labor Housing (FLH) Loans	16,300,000
Section 516 FLH Grants (Unobligated prior year funds will be added to the amount shown)	11,000,000
Section 533 Housing Preservation Grants (HPG)	23,000,000
Section 521 Rental Assistance RRH New Construction	128,158,000
FLH New Construction	5,214,000

E. MFH loan types not allocated to States are:

1. *Section 514 FLH Loans.* These loans are funded in accordance with § 1940.579(a) of subpart L of part 1940 of this chapter. Three and one-half (3.5) percent of FY 91 FLH appropriation has been set aside under the Rural Housing Targeting Set Aside (RHTSA) for those counties designated as underserved. Further guidance on RHTSA will be published at a later date. Loans within the State Director's approval authority may be obligated on a first-come, first-served basis. Proposals that include FLH grant requests or for loan amounts in excess of the State Director's approval authority are to be submitted to the Director, Multi-Family Housing Processing Division (MFHPD).

2. *Section 516 FLH Grants.* These grants are funded in accordance with § 1940.579(b) of subpart L of part 1940 of this chapter. All grant requests are to be submitted to the Director, MFHPD.

3. *RA for FLH—New Construction.* This RA is held in a National Office reserve for use with concurrent loan and grant applications in accordance with paragraph II B 7 b (ii) B.

II. State Allocations

All allocations have been developed with the methodology and formulas stated in this subpart. The funds distributed to each State for a particular quarter may exceed the funds available nationally for all States. Therefore, if funds become exhausted at the National level, some States will not have access to their full distribution for the remainder of the quarter.

A. Section 515 RRH Funds

1. *Amount Available for Allocation:*

Total available	$573,900,000
Less 15 percent reserve	86,085,000
Less base allocation	3,006,000
Less administrative allocation	3,500,000
Basic formula amount	$481,309,000

2. *Base allocation.* The base allocation is an amount above the computed formula amount sufficient for each State to fund two 24-unit projects, based upon FY 90 loan activity. Regions that receive administrative allocations do not receive base allocations.

3. *Administrative allocation.* The regions of the Western Pacific Areas and Virgin Islands are allocated $1,750,000 each which is the equivalent of two 24-unit projects, based upon FY 90 loan activity.

4. *Nonprofit Set Aside (NPSA).* Seven (7) percent of each States' FY 91 allocation has been set aside in the National Office for certain nonprofit applicants. These funds have been deducted from the State distributions. See exhibit B of subpart L of part 1940 of this chapter for further information on the NPSA.

5. *RHTSA.* Three and one-half (3.5) percent of FY 91 RRH appropriation has

been set aside for those counties designated as underserved. These funds will come from the National Office reserve. Further guidance identifying the counties and accessing these funds will be published at a later date.

6. *Reserves.*

a. *State Office reserve:* In states which allocate funds to districts, § 1940.552(j) of subpart L of part 1940 of this chapter authorizes the State Director to hold a reserve. Such reserves, if established, will be available *only* for patch-outs, subsequent loans for repairs, transfers and cost overruns, leveraging under RHTSA and NPSA, hardships or emergency situations. The State Director will maintain records on how State Office reserves were utilized, including a justification for each disbursement.

b. *National Office reserve:* The reserve is 15 percent of the total funds available and is broken down as follows:

(i) General Reserve: $55,998,500 in general reserve funds have been set aside for equity loans, subsequent loans for repairs, transfers, patch-outs, and emergency or hardship cases *only* until June 3, 1991. Approximately $25,000,000 is for use with equity loans. Only limited funds may be available for other than the above described purposes after June 3, 1991. Further guidance on how to access reserve funds will be published prior to June 3, 1991.

(ii) Designated Reserves:

(A) *RHTSA.* $20,086,500 has been set aside for those counties designated as underserved. These funds will be subject to year end pooling requirements.

(B) *State RA:* $10 million of the RRH funds have been set aside for States in which an active State sponsored RA program is available. The State RA program must be comparable to FmHA RA. To participate in this reserve, the State Director should submit a written request with specific information about the State RA program; i.e., memorandum of understanding, documentation from the provider, etc. to the Director, MFHPD, no later than January 25, 1991. Funds will be distributed to participating States based on a pro-rata share of State RA units being provided. These funds are subject to year-end pooling requirements.

7. *Pooling of funds.*

a. *State Office pooling.* In states which allocate funds to districts, states are *not* authorized to pool unobligated funds prior to May 1, 1991.

b. *National Office pooling.* Unused RRH funds will be placed in the National Office reserve and will be made available administratively. Year-end pooling of all RRH funds is scheduled for COB August 16, 1991.

8. *Availability of the allocation.* States are authorized to approve, during the first quarter of FY 91, up to 25 percent of their RRH allocation indicated in exhibit A of subpart L of part 1940 of this chapter (available in any FmHA State Office) and up to 70 percent during the second quarter. The remaining balances are fully available in the third and fourth quarters. In states that do not have sufficient funds to obligate at least one project during the first or second quarters, the State Director may request authorization from the Director, MFHPD, to exceed the designated percentages. Patch-outs may be authorized from next quarter allocations, provided the request does not exceed 30 percent of the total loan obligation. The State Director may authorize AD-622s not to exceed 150 percent of the *net* RRH annual allocation available to the State.

9. *Suballocation by the State Director.* Funds may be suballocated to District Offices, at the discretion of the State Director, in accordance with § 1940.552(j) of subpart L of part 1940 of this chapter.

B. Rental Assistance

1. Beginning FY 91, RA unit values have been established for each State, based on historical RA usage. System changes implementing different State RA unit values are currently being developed and are expected to be available January 1, 1991. Until State Directors receive further notice, RA obligation requests may be approved but they cannot be input in the Automated Multi-Housing Accounting System (AMAS).

2. *Valuation of New Construction RA.* A total of $133,372,000 is available for new construction RA. This equates to an estimated 12,238 units for the RRH and FLH loan programs. To determine the number of RA units available nationwide, a national average of $10,898 was utilized for new construction RA. All RA units held in the reserves are estimated, based on the national average.

3. *Estimated Units available for allocation:*

Estimated total units available	12,238
LH	478
RRH	11,760
NPSA	700
Less RRH reserve	900
Less RRH base allocation	56
Less RRH administrative allocation	70
Basic RRH formula amount	10,034

4. *Base allocation.* The base allocation is an amount above the computed formula sufficient for each State to receive 35 units of RA to assist at least two RRH projects with an average amount of RA.

5. *Administrative allocation.* The regions of the Western Pacific Areas and the Virgin Islands are each allocated 35 units of RA to assist at least two RRH projects with an average amount of RA.

6. *Nonprofit Set Aside.* 700 units of new construction RA have been set aside in the National Office for certain nonprofit applicants. See Exhibit B of subpart L of part 1940 of this chapter for further information on the NPSA.

7. *Reserves.* The National Office reserve has been reduced to allocate more RA to States.

a. *State Office reserve:* In states which allocate funds and RA to districts, § 1940.552 (j) of subpart L of part 1940 of this chapter authorizes the State Director to hold a reserve. Such reserves, if established, will be limited to patch-outs and leveraging under the RHTSA, NPSA, hardships or emergency situations. The State Director will maintain records on how the State Office reserves are utilized, including a justification for each disbursement.

b. *National Office reserve.* A reserve of 900 units is being held for RRH, which includes 550 units for the RHTSA. The 478 units of RA for FLH are also held in a separate reserve. The reserve is broken down as follows:

(i) *General RRH Reserve:* 350 units of RA have been reserved. Except for patch-outs, hardships or emergency situations, or additional units needed to assist a state in utilizing its full allocation of funds, RA units may not be requested until June 3, 1991. Further guidance on how to access reserve RA will be published prior to June 3, 1991.

(ii) *Designated reserves:*

(A) *RHTSA:* 550 units of RA have been reserved under a targeting set aside program for those counties designated as underserved. Further guidance on accessing this reserve will be provided at a later date.

(B) *FLH.* The 478 RA units for Labor Housing (LH) new construction are being retained in a separate LH reserve. Written requests for the LH reserve may be made by State Directors in conjunction with LH loan and grant requests, on a case-by-case basis, to the Director, MFHPD.

7. *Pooling of RA.*

a. *State Office pooling.* In states which allocate RA to districts, states are *not* authorized to pool unobligated RA prior to May 1, 1991.

b. *National Office pooling.* Unused RA units will be placed in the National Office reserve and will be made available administratively. Year-end pooling of RA for RRH is scheduled for COB August 16, 1991.

8. *Availability of the allocation.* States are authorized to approve, during the first quarter, up to 25 percent of their RA allocation indicated in exhibit A of subpart l of part 1940 of this chapter (available in any FmHA State Office) and up to 70 percent during the second quarter. The remaining balances are fully available in the third and fourth quarters. In States that do not have sufficient RA for at least one project during the first and second quarters, the State Director may request authorization from the Director, MFHPD, to exceed the designated percentages. Patchouts may be authorized from next quarter allotments provided the request does not exceed 30 percent of the total RA obligation. The market should determine the need for the number of RA units assigned to a project, keeping in mind that at least 95 percent of the new construction RA assigned to a complex must be made available to serve very-low income tenants, as established in § 1944.215(f)(3) of subpart E of part 1944 of this chapter. The State Director may authorize AD–622s not to exceed 150 percent of the units allocated to the State.

9. *Suballocation by the State Director.* RA units may be suballocated to District Offices, at the discretion of the State Director, in accordance with § 1940.552(j) of subpart L of part 1940 of this chapter.

10. *Approval and obligation of RA.* New construction RA may only be approved and obligated simultaneously or subsequent to approval and obligation of a corresponding RRH loan. RA for loans obligated in prior fiscal year cannot be approved and obligated without National Office authorization.

C. *Section 533 Housing Preservation Grants (HPG)*

1. *Amount available for allocation:*

Total available	$23,000,000
Less reserve	2,300,000
Less base allocation	5,100,000
Less administrative allocation	0
Basic formula amount	$15,600,000

2. *Base allocation.* The base allocation is equal to the anticipated size of an average one-year HPG proposal ($100,000) times the number of States and regions. The regions of the Western Pacific Areas and Virgin Islands did not receive base allocations. Fund requests in these regions will be considered from the reserve.

3. *Administrative allocations.* Not used.

4. *Reserve.* Allocated funds must be used prior to requesting reserve funds. Further guidance on accessing the National reserve will be published at a later date.

5. *Pooling of funds.* Funds in excess of the dollar amount of applications on hand will be returned to the National Office reserve for redistribution.

6. *Availability of the allocation.* HPG is a competitive grant program. Opening and closing dates for submission of preapplications will be announced in the **Federal Register.** At this time, it is estimated that the ninety day preapplication period should begin on December 17, 1990. (This date may be revised as well as the pooling date, depending on the publication of the announcement). Subsequent to review and ranking of preapplications and submission of final applications, States are authorized to obligate HPG requests in amounts not to exceed those reflected in this exhibit A of subpart L of part 1940 of this chapter (available in any FmHA State Office).

III. Exception Authority

The Administrator, or his/her designee, may, in individual cases, make an exception to any requirements herein which are not inconsistent with the authorizing statute, if he/she finds that application of such requirement would adversely affect the interest of the Government or adversely affect the intent of the authorizing statute and/or RRH program or result in an undue hardship by applying the requirement. The Administrator, or his/her designee, may exercise this authority upon the request of the State Director, Assistant Administrator for Housing, or Director of the Multi-Family Housing Processing Division. The request must be supported by information that demonstrates the adverse impact or effect on the program. The Administrator, or his/her designee, also reserves the right to change pooling dates, establish/change minimum and maximum fund usage from set asides and/or the reserve, or restrict participation in set asides and/or reserves.

IV. [Reserved].

V. [Reserved].

Single Family Housing (SFH)

I. General

A. This provides SFH allocations available to individual States for Fiscal Year (FY) 1991. Allocation computations have been made in accordance with §§ 1940.565 through 1940.568 of subpart L of part 1940 of this chapter. State Directors will make certain that this guidance is implemented within his/her jurisdiction.

B. Section 502 RH funds totaling $100 million have been appropriated for the guaranted housing program. Of these funds, $70 million are to be used for non-interest asssisted loan guarantees and $30 million for interest assisted loan guarantees. Further guidance will be published at a later date concerning the designation, based on a need in eligible rural areas, of a limited number of pilot States for participation in FY 91.

C. In the States of Texas, Arizona, New Mexico and California, certain colonias are now eligible for SFH assistance and may have priority for funding. Until further guidance is published on colonias, the State Director should contact the National Office (SFHPD) when an application for assistance in a colonias is received.

D. SFH loan and grant levels authorized for FY 91 are as follows:

Section 502 Subsidized Rural Housing Loans:	
Very Low-income Loans	$510,581,000
Low-income Loans	765,870,000
Nonsubsidized Funds (See Paragraphs IE5 and IE6)	
Section 502 Guaranteed Loans:	
Non–interest Assisted Loan Guarantees	70,000,000
Interest Assisted Loan Gurantees	30,000,000
Section 504 Housing Repair Loans	11,330,000
Section 504 Housing Repair Grants*	12,500,000
Section 524 RH Site Loans	600,000
Section 523 Land Development Fund	500,000
Section 523 Self-Help Technical Assistance Grants*	8,7500,000
Section 509 Compensation for Construction Defects*	500,000

*Unobligated prior year funds will be added to the amount shown.

E. SFH loan and grant types not allocated to States are available on a first-come, first-served basis as follows:

1. *Section 523 Self-Help Technical Assistance Grants.* Before obligating funds, State Directors must request in writing and transmit by telefax to the Special Programs Branch, Single Family Housing Processing Division (SFHPD), the following information: name of grantee, amount of obligation and whether funds are for a "predevelopment agreement".

2. *Section 523 Land Development Fund.* Before obligating loan funds for any project, the State Director must request funding authority from the National Office (SFHPD).

3. *Section 524 RH Site Loans.* $21,000 (three and one-half percent) of the FY 91 appropriation have been set aside under the Rural Housing Targeting Set Aside (RHTSA) for those counties designated as underserved. Further guidance on RHTSA will be published at a later date. Prior to loan approval, the State Director must request funding authority from the National Office (SFHPD).

4. *Section 509 Compensation for Construction Defects.* Prior to approval, the State Director must request and receive written funding authority from the National Office, Single Family Housing Servicing and Property Management Division (SFHSPMD).

5. *Section 502 Nonsubsidized Funds (loan making).*

a. Funds totaling $50 million have been set aside from the National Office Section 502 reserve for nonsubsidized loans for loan making other than servicing actions. Each State will be given an initial distibution of $800,000. Additional funds can be requested, based on need and subject to the availability of funds, by contacting the National Office (SFHPD).

b. These funds are only for very low- and low-income applicants who are otherwise eligible for assistance, but based on the amount of the loan requested, the interest credit assistance formula results in no interest credit. These funds are to be used for loans on new or existing construction not currently financed or owned by FmHA.

c. [Reserved]

6. *Section 502 Nonsubsidized Funds (Loan servicing).*

a. An initial amount of $14 million has been set aside from the National Office Section 502 reserve for nonsubsidized loans for servicing actions. This amount can be increased or decreased at the discretion of the SFHPD Director, based on need and the availability of funds. Each State will be given an initial distribution of $200,000 and additional funds can be requested by contacting the National Office (SFHPD).

b. These funds will be used only for subsequent loan on properties currently financed with FmHA loan funds. Loans to above-moderate income families or persons are not authorized. Loans to very low- and low-income borrowers who do not qualify for interest credit assistance and to moderate-income borrowers, are authorized only for the following puroses:

(i) Subsequent loans for repair and rehabilitation.

(ii) The subsequent loan part only (i.e., repair or rehabilitation or the payment of equity) in connection with transfers by assumption or credit sales.

c. [Reserved]

II. State Allocations

All allocations have been developed with the methodology and formulas stated in this subpart. The funds distributed to each State for a particular quarter may exceed the funds available nationally for all States. Therefore, if funds become exhausted at the national level, some States will not have access to their full distribution for the remainder of the quarter.

A. *Section 502 Subsidized Rural Housing loans.* See § 1940.565 of subpart L of part 1940 of this chapter.

1. *Amount available for allocation.*

Total available	$1,276,451,000
Less general reserve	50,971,000
Less designated reserves	118,676,000
Less administrative allocation	11,801,000
Basic formula amount	$1,095,003,000

2. *Basic formula criteria, data source, and weight.* See § 1940.565(b) of Subpart L of Part 1940 of this chapter. Data derived from the 1980 U.S. Census was provided to each State by National Office unnumbered memorandum dated November 2, 1983 (available in any FmHA State Office). This data, supplemented by the list by county of rural population (places under 2,500 population) provided in unnumbered memorandum dated August 6, 1985 (available in any FmHA State Office), *must* be used to suballocate funds to District Offices.

3. *Transition formula.* Not applicable for use this fiscal year by the National Office or by State Offices.

4. *Base allocation.* Not applicable for use this fiscal year by the National Office or by State Offices.

5. *Administrative Allocation.* The regions of the Virgin Islands and the Western Pacific Areas receive an administrative allocation.

6. *Reserve.*

a. *State Office Reserve.* State Directors will maintain sufficient funds in the State Office reserve only to fund loan types described in § 1944.26(b)(2)(i) and (ii) of subpart A of part 1944 of this chapter. The State Director will maintain records on how State Office reserves were utilized, including a justification for each hardship case disbursement. Each State Director must establish management controls to make certain that loans are not processed to the point of approval unless allocated funds are available or prior approval has been received for sufficient National Office reserve funds to obligate the loans.

b. *National Office Reserve.*

(i) *General Reserve.* Use of these reserve funds will be limited to:

(A) Providing funds to States to handle unforeseen circumstances, such as natural disasters, which cannot be funded with the State's available allocation. Reserve requests should be submitted in writing by State Directors to the National Office (SFHPD). Subject to the availability of funds at the National level, an advance from the formula allocation for the next quarter may also be requested. Based upon need and available funds, the Administrator reserves the right to permit expanded access to the reserve without notice in the Federal Register.

(B) Matching funds for States with approved mutual self-help housing grants. Subject to the availability of general reserve funds, matching funds may be requested on the basis of two dollars of National Office reserve funds for each dollar of State allocated section 502 RH funds used to assist participating self-help families. Funds are to be requested of the participating families at the time of loan approval. Requests for these funds should be submitted in writing by State Directors to the National Office (SFHPD) and include the name and case number of the applicants, total loan amount(s), amount of State contribution, amount requested from the National Office reserve, and applicant income category (very low- or low-income).

(ii) *Designated Reserves.*

(A) *Section 502 Nonsubsidized Funds (loan making).* See Paragraph IE5.

(B) *Section 502 Nonsubsidized Funds (loan servicing).* See Paragraph IE6.

(C) *RHTSA.* $44,676,000 (three and one-half percent) of the FY 91 Section 502 appropriation have been set aside for those counties designated as underserved. Further RHTSA guidance identifying the counties and explaining access to these funds will be published at a later date.

(A) *Demonstration Housing Program.* $10 million of Section 502 RH Funds have been set aside for the demonstration housing program and will be designated on a project-by-project basis. Designated funds will be allotted 60 percent for low-income and 40 percent for very low-income. All funds are subject to the pooling requirements of subpart L of part 1940 of this chapter. Further guidance can be obtained by contacting the SFHPD Director.

7. *Pooling of funds.*

(a) *State Office pooling.* If pooling is conducted within a State, it must not take place more than 15 calendar days prior to the end of the first, second and/or third quarter. If fourth quarter pooling is conducted within a State, it must not take place more than 15 calendar days prior to the National Office year-end pooling date. These pooled funds may be redistributed by the State Director provided the State Director has determined that the pooled funds could not be use in the District/County Offices receiving the funds allocated in accordance with this subpart. This determination will: (1) Be in writing, (2) be filed in the State Office, and (3) include a statement that all appropriate efforts were made to use the funds as allocated.

(b) *National Office pooling.* No mid-year pooling is anticipated. Year-end pooling is tentatively scheduled for close of business August 16, 1991. Pooled funds will be placed in the National Office reserve and will be made available administratively.

8. *Availability of the allocation.* The Housing Act of 1949, as amended, provides that not less than 25 percent of the funds be made available for very low-income Section 502 loan applicants. Funds will be distributed by quarters as follows: 35 percent through the first quarter, 65 percent through the second quarter, 95 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date.

9. *Suballocation by the State Director.* The State Director must suballocate to each District Office uning the methodology and formulas required by this subpart. The District Director will make funds available on a first-come, first-served basis to all County Offices in the District. Funds will not be suballocated to County Offices without the prior written approval of the Administrator. No County Office will have its access to funds restricted without the prior written approval of the Administrator.

B. *Section 504 Housing Repair loans.* See § 1940.566 of subpart L of part 1940 of this chapter.

1. *Amount available for allocations*

Total Available	$11,330,000
Less General Reserve	1,060,000
Less Designated RHTSA Reserve	397,000
Less Administrative Allocation	779,000
Basic Formula Amount	$9,094,000

2. *Basic formula criteria, data source and weight.* Data derived from the 1980 U.S. Census was provided to each State by National Office unnumbered memorandum dated November 2, 1983 (available in any FmHA State Office). This data must be used if funds are suballocated to District Offices.

3. *Transition formula.* Not applicable for use this fiscal year by the National Office or by State Offices.

4. *Base allocation.* Not applicable for use this fiscal year by the National Office or by State Offices.

5. *Administrative allocation.* The regions of the Virgin Islands and the Western Pacific Areas receive an administrative allocation.

6. *Reserve.* Requests for National Office reserve funds will be considered on a first-come, first-served basis and should be submitted in writing by the State Director to the National Office (SFHPD).

7. *Pooling of funds.* No mid-year pooling is anticipated. Year-end pooling is tentatively scheduled for close of business August 16, 1991. The Administrator may also pool part of a State's allocation at anytime with the concurrence of the affected State Director. Pooled funds will be placed in the National Office reserve and will be made available administratively.

8. *Availability of the allocation.* Funds will be distributed by quarters as follows: 25 percent through the first quarter, 60 percent through the second quarter, 90 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date. State Directors should limit requests for funds from the National Office reserve to no more than an amount equal to the next quarter's distribution.

C. *Section 504 Housing Repair Grants.* See § 1940.567 of subpart L of part 1940 of this chapter.

1. *Amount available for allocations*

Total Available	$12,500,000
Less General Reserve	1,062,000
Less Designated RHTSA Reserve	438,000
Less Administrative Allocation	96,000
Basic formula Amount	$10,904,000

2. *Basic Formula criteria, data source and weight.* Data derived from the 1980 U.S. Census was provided to each State by National Office unnumbered memorandum dated November 2, 1983 (available in any FmHA State Office). This data must be used if funds are suballocated to District Offices.

3. *Transition formula.* Not applicable for use this fiscal year by the National Office or by State Offices.

4. *Base allocation.* Not applicable for use this fiscal year by the National Office or by State Offices.

5. *Administrative allocation.* The regions of the Virgin Islands and the Western Pacific Areas receive an administrative allocation.

6. *Reserve.*

a. The National Office reserve is to assist State Directors with hardship situations (community water supply assessment, natural disaster, etc.) or individual cases. If State Directors have a situation or an individual case believed to be a hardship, they may submit it to the National Office (SFHPD, Special Programs Branch) for consideration. Submittals must be limited to current quarter needs and include a description of the hardship, amount of funds needed and the impact if delayed until next quarter. If the hardship is an individual case, the name and case number must also be included.

b. A hardship is defined as a situation or an individual case with a significant priority in funding, ahead of other requests, due to the health, safety, and/or physical needs of the applicant or community. The priority may be related to sanitation hazards, or impending climatic hazards which are above average and should receive priority for funds before others.

7. *Pooling of funds.* No mid-year pooling is anticipated. Year-end pooling is tentatively scheduled for close of business August 16, 1991. The Administrator may also pool part of a State's allocation at anytime with the concurrence of the affected State Director. Pooled funds will be placed in the National Office reserve and will be made available administratively.

8. *Availability of the allocation.* Funds will be distributed by quarters as follows: 25 percent through the first quarter, 60 percent through the second quarter, 90 percent through the third quarter, and 100 percent in the fourth quarter until the National Office year-end pooling date. State Directors should limit rquests for funds from the National Office reserve to no more than an amount equal to one-half of the next quarter's distribution.

III. Exception Authority

The Administrator, or his/her designee, may, in individual cases, make an exception to any requirements herein which are not inconsistent with the authorizing statute, if he/she finds that application of such requirement would adversely affect the interest of the Government or adversely affect the intent of the authorizing statute and/or SFH program or result in an undue

hardship by applying the requirement. The Administrator, or his/her designee, may exercise this authority upon the request of the State Director, Assistant Administrator for Housing, or Director of the Single Family Housing Processing Division. The request must be supported by information that demonstrates the adverse impact or effect on the program. The Administrator, or his/her designee, also reserves that right to change pooling dates, establish/change minimum and maximum fund usage from set asides and/or the reserve, or restrict participation in set asides and/or reserves.

FARMERS HOME ADMINISTRATION MULTI-FAMILY HOUSING ALLOCATIONS

[In thousands]

State	Formula factor	Rural rental housing					Rural rental housing rental assistance units		
		Formula allocation	Base/ admin	Total FY 91	Less nonprofit setaside	Net RRH allocation	Formula allocation	Base/ admin	Total FY 91
Alabama	0.0327874	$15,781	$0	$15,781	$1,105	$14,676	329	0	329
Alaska	0.0043499	2,094	0	2,094	147	1,947	44	0	44
Arizona	0.0122772	5,909	0	5,909	414	5,495	123	0	123
Arkansas	0.0245290	11,806	0	11,806	826	10,980	246	0	246
California	0.0354499	17,062	0	17,062	1,194	15,868	356	0	356
Nevada	0.0017715	853	897	1,750	122	1,627	18	17	35
Colorado	0.0081046	3,901	0	3,901	273	3,628	81	0	81
Delaware	0.0023022	1,108	642	1,750	123	1,628	23	12	35
Maryland	0.0101880	4,904	0	4,904	343	4,560	102	0	102
Florida	0.0261663	12,594	0	12,594	882	11,712	263	0	263
Georgia	0.0408019	19,638	0	19,638	1,375	18,264	409	0	409
Hawaii	0.0037272	1,794	0	1,794	126	1,668	37	0	37
W. Pacific Areas	0.0000000	0	1,750	1,750	123	1,628	0	35	35
Idaho	0.0069537	3,347	0	3,347	234	3,113	70	0	70
Illinois	0.0257623	12,400	0	12,400	868	11,532	258	0	258
Indiana	0.0236177	11,367	0	11,367	796	10,572	237	0	237
Iowa	0.0157202	7,566	0	7,566	530	7,037	158	0	158
Kansas	0.0117522	5,656	0	5,656	396	5,260	118	0	118
Kentucky	0.0394140	18,970	0	18,970	1,328	17,642	395	0	395
Louisiana	0.0295365	14,216	0	14,216	995	13,221	296	0	296
Maine	0.0101246	4,873	0	4,873	341	4,532	102	0	102
Massachusetts	0.0093225	4,487	0	4,487	314	4,173	94	0	94
Connecticut	0.0050165	2,414	0	2,414	169	2,245	50	0	50
Rhode Island	0.0011702	563	1,187	1,750	123	1,628	12	23	35
Michigan	0.0301872	14,529	0	14,529	1,017	13,512	303	0	303
Minnesota	0.0194218	9,348	0	9,348	654	8,694	195	0	195
Mississippi	0.0311598	14,997	0	14,997	1,050	13,948	313	0	313
Missouri	0.0255082	12,277	0	12,277	859	11,418	256	0	256
Montana	0.0055681	2,680	0	2,680	188	2,492	56	0	56
Nebraska	0.0077613	3,736	0	3,736	261	3,474	78	0	78
New Jersey	0.0071748	3,453	0	3,453	242	3,212	72	0	72
New Mexico	0.0109067	5,249	0	5,249	367	4,882	109	0	109
New York	0.0289916	13,954	0	13,954	977	12,977	291	0	291
North Carolina	0.0508284	24,464	0	24,464	1,712	22,752	510	0	510
North Dakota	0.0049179	2,367	0	2,367	166	2,201	49	0	49
Ohio	0.0362698	17,457	0	17,457	1,222	16,235	364	0	364
Oklahoma	0.0185916	8,948	0	8,948	626	8,322	187	0	187
Oregon	0.0126876	6,107	0	6,107	427	5,679	127	0	127
Pennsylvania	0.0403055	19,399	0	19,399	1,358	18,041	404	0	404
Puerto Rico	0.0568971	27,385	0	27,385	1,917	25,468	571	0	571
South Carolina	0.0278229	13,391	0	13,391	937	12,454	279	0	279
South Dakota	0.0067145	3,232	0	3,232	226	3,006	67	0	67
Tennessee	0.0342906	16,504	0	16,504	1,155	15,349	344	0	344
Texas	0.0589722	28,384	0	28,384	1,987	26,397	592	0	592
Utah	0.0040595	1,954	0	1,954	137	1,817	41	0	41
Vermont	0.0043676	2,102	0	2,102	147	1,955	44	0	44
New Hampshire	0.0050354	2,424	0	2,424	170	2,254	51	0	51
Virgin Islands	0.0000000	0	1,750	1,750	123	1,628	0	35	35
Virginia	0.0315604	15,190	0	15,190	1,063	14,127	317	0	317
Washington	0.0146400	7,046	0	7,046	493	6,553	147	0	147
West Virginia	0.0211270	10,169	0	10,169	712	9,457	212	0	212
Wisconsin	0.0203333	9,787	0	9,787	685	9,102	204	0	204
Wyoming	0.0030537	1,470	280	1,750	122	1,627	31	4	35
State totals	1.0000000	$481,309	$6,506	$487,815	$34,147	$453,668	10,034	126	10,160
N/O Reserves				86,085					1,600
FLH RA units									478
Totals				$573,900					12,238

FARMERS HOME ADMINISTRATION MULTI-FAMILY HOUSING, SECTION 521

[Rental assistance five year unit values]

State	New construction weighted RA value	Family value servicing	Elderly value servicing	Labor housing servicing
Alabama	11,948	11,018	11,491	11,018
Alaska	16,088	16,223	16,223	16,223
Arizona	12,653	14,128	11,559	14,128
Arkansas	10,451	10,680	9,261	10,680
California	9,161	9,125	8,720	9,125
Nevada	11,853	10,815	13,114	10,815
Colorado	12,792	13,249	11,288	13,249
Delaware	14,330	14,128	14,128	14,128
Maryland	13,595	12,167	15,615	12,167
Florida	10,140	11,018	10,207	11,018
Georgia	8,993	8,449	8,990	8,449
Hawaii	10,771	11,076	10,771	11,076
W. Pacific Areas	10,898	11,076	10,771	11,076
Idaho	10,562	9,937	10,410	9,937
Illinois	9,713	10,410	10,004	10,410
Indiana	8,205	9,396	8,044	9,396
Iowa	9,549	10,477	7,976	10,477
Kansas	8,374	10,004	8,585	10,004
Kentucky	11,133	11,762	10,613	11,762
Louisiana	12,956	12,235	12,370	12,235
Maine	15,871	16,291	15,479	16,291
Massachusetts	12,571	10,410	14,803	10,410
Connecticut	8,848	7,030	7,030	7,030
Rhode Island	12,843	12,843	12,843	12,843
Michigan	8,848	9,666	7,976	9,666
Minnesota	9,401	9,734	8,585	9,734
Mississippi	12,130	12,302	11,897	12,302
Missouri	7,909	8,247	6,624	8,247
Montana	7,571	10,951	7,165	10,951
Nebraska	7,013	7,774	7,300	7,774
New Jersey	16,353	16,358	16,020	16,358
New Mexico	11,762	15,953	10,275	15,953
New York	12,130	11,829	10,342	11,829
North Carolina	12,260	10,410	12,843	10,410
North Dakota	10,072	9,801	9,531	9,801
Ohio	9,182	10,477	8,111	10,477
Oklahoma	9,469	9,734	9,734	9,734
Oregon	9,988	11,897	9,599	11,897
Pennsylvania	12,244	9,463	12,573	9,463
Puerto Rico	7,233	7,233	7,233	7,233
South Carolina	11,551	10,477	11,897	10,477
South Dakota	11,340	11,018	10,139	11,018
Tennessee	9,606	10,139	9,869	10,139
Texas	10,132	10,815	9,531	10,815
Utah	13,181	15,547	13,181	15,547
Vermont	15,900	13,519	16,696	13,519
New Hampshire	13,459	13,249	12,978	13,249
Virgin Islands	10,849	11,076	10,771	11,076
Virginia	11,000	10,680	11,018	10,680
Washington	9,747	10,748	8,517	10,748
West Virginia	10,468	11,694	8,990	11,694
Wisconsin	8,553	8,990	7,030	8,990
Wyoming	10,241	12,100	8,652	12,100
National average	10,898	11,076	10,771	11,076

FARMERS HOME ADMINISTATION MULTI-FAMILY HOUSING—SECTION 533 HPG ALLOCATIONS

[In thousands]

State	Basic formula factor	Formula allocation	Base allocation	Total FY 91 allocation
Alabama	0.0327874	$511	$100	$611
Alaska	0.0043499	68	100	168
Arizona	0.0122772	192	100	292
Arkansas	0.0245290	383	100	483
California	0.0354499	553	100	653
Nevada	0.0017715	28	100	128
Colorado	0.0081046	126	100	226
Delaware	0.0023022	36	100	136
Maryland	0.0101880	159	100	259
Florida	0.0261663	408	100	508
Georgia	0.0408019	637	100	737

FARMERS HOME ADMINISTATION MULTI-FAMILY HOUSING—SECTION 533 HPG ALLOCATIONS—Continued

[In thousands]

State	Basic formula factor	Formula allocation	Base allocation	Total FY 91 allocation
Hawaii	0.0037272	58	100	158
W. Pac. Ter.	N/A	N/A	N/A	0
Idaho	0.0069537	108	100	208
Illinois	0.0257623	402	100	502
Indiana	0.0236177	368	100	468
Iowa	0.0157202	245	100	345
Kansas	0.0117522	183	100	283
Kentucky	0.0394140	615	100	715
Louisiana	0.0295365	461	100	561
Maine	0.0101246	158	100	258
Massachusetts	0.0093225	145	100	245
Connecticut	0.0050165	78	100	178
Rhode Island	0.0011702	18	100	118
Michigan	0.0301872	471	100	571
Minnesota	0.0194218	303	100	403
Mississippi	0.0311598	486	100	586
Missouri	0.0255082	398	100	498
Montana	0.0055681	87	100	187
Nebraska	0.0077613	121	100	221
New Jersey	0.0071748	112	100	212
New Mexico	0.0109067	170	100	270
New York	0.0289916	452	100	552
North Carolina	0.0508284	793	100	893
North Dakota	0.0049179	77	100	177
Ohio	0.0362698	566	100	666
Oklahoma	0.0185916	290	100	390
Oregon	0.0126876	198	100	298
Pennsylvania	0.0403055	629	100	729
Puerto Rico	0.0568971	888	100	988
South Carolina	0.0278229	434	100	534
South Dakota	0.0067145	105	100	205
Tennessee	0.0342906	535	100	635
Texas	0.0589722	920	100	1,020
Utah	0.0040595	63	100	163
Vermont	0.0043676	68	100	168
New Hampshire	0.0050354	79	100	179
Virgin Islands	N/A	N/A	N/A	0
Virginia	0.0315604	492	100	592
Washington	0.0146400	228	100	328
West Virginia	0.0211270	330	100	430
Wisconsin	0.0203333	317	100	417
Wyoming	0.0030537	48	100	148
State totals	1.0000000	$15,600	$5,100	$20,700
N/O reserve				2,300
Total				$23,000

FARMERS HOME ADMINISTRATION FISCAL YEAR 1991 ALLOCATION IN THOUSANDS, SECTION 502 SUBSIDIZED RURAL HOUSING LOANS

States	Total FY 1991 allocation	Very low-income allocation (40 percent)	Low-income allocation (60 percent)
Alabama	$30,729	$12,292	$18,437
Alaska	4,225	1,690	2,535
Arizona	11,539	4,616	6,923
Arkansas	22,938	9,176	13,762
California	41,925	16,770	25,155
Nevada	2,345	938	1,407
Colorado	10,056	4,023	6,033
Delaware	2,804	1,122	1,682
Maryland	13,124	5,250	7,874
Florida	29,181	11,673	17,508
Georgia	39,601	15,841	23,760
Hawaii	3,832	1,533	2,299
W. Pacific areas	8,623	3,450	5,173
Idaho	7,794	3,118	4,676
Illinois	34,222	13,689	20,533
Indiana	31,711	12,685	19,026
Iowa	20,444	8,178	12,266
Kansas	15,302	6,121	9,181
Kentucky	35,840	14,336	21,504
Louisiana	26,784	10,714	16,070
Maine	11,603	4,642	6,961
Massachusetts	14,194	5,678	8,516

FARMERS HOME ADMINISTRATION FISCAL YEAR 1991 ALLOCATION IN THOUSANDS, SECTION 502 SUBSIDIZED RURAL HOUSING LOANS—Continued

States	Total FY 1991 allocation	Very low-income allocation (40 percent)	Low-income allocation (60 percent)
Connecticut	8,511	3,405	5,106
Rhode Island	1,781	713	1,068
Michigan	40,091	16,037	24,054
Minnesota	23,365	9,346	14,019
Mississippi	26,701	10,681	16,020
Missouri	28,676	11,471	17,205
Montana	6,621	2,649	3,972
Nebraska	9,771	3,909	5,862
New Jersey	11,279	4,512	6,767
New Mexico	9,531	3,813	5,718
New York	40,165	16,066	24,099
North Carolina	53,904	21,562	32,342
North Dakota	5,534	2,214	3,320
Ohio	46,730	18,692	28,038
Oklahoma	19,616	7,847	11,769
Oregon	16,069	6,428	9,641
Pennsylvania	55,682	22,273	33,409
Puerto Rico	28,932	28,932	N/A
South Carolina	27,328	10,932	16,396
South Dakota	6,781	2,713	4,068
Tennessee	33,930	13,572	20,358
Texas	60,300	24,120	36,180
Utah	4,448	1,780	2,668
Vermont	5,561	2,225	3,336
New Hampshire	7,111	2,845	4,266
Virgin Island	3,178	1,272	1,906
Virginia	34,176	13,671	20,505
Washington	18,874	7,550	11,324
West Virginia	22,071	8,829	13,242
Wisconsin	27,312	10,925	16,387
Wyoming	3,959	1,584	2,375
State totals	$1,106,804	$460,103	$646,701
General reserve	50,971	28,607	22,364
Designated reserves	118,676	21,871	96,805
Total	$1,276,451	$510,581	$765,870

FARMERS HOME ADMINISTRATION FISCAL YEAR 1991 ALLOCATION—SECTION 502 SUBSIDIZED RURAL HOUSING LOANS

[In thousands]

States	State basic formula factor	State basic formula allocation	Administrative allocation	Total FY 1991 allocation
Alabama	0.0280625	$30,729	N/A	$30,729
Alaska	0.0038580	4,225	N/A	4,225
Arizona	0.0105376	11,539	N/A	11,539
Arkansas	0.0209475	22,938	N/A	22,938
California	0.0382879	41,925	N/A	41,925
Nevada	0.0021415	2,345	N/A	2,345
Colorado	0.0091839	10,056	N/A	10,056
Delaware	0.0025606	2,804	N/A	2,804
Maryland	0.0119855	13,124	N/A	13,124
Florida	0.0266494	29,181	N/A	29,181
Georgia	0.0361656	39,601	N/A	39,601
Hawaii	0.0034996	3,832	N/A	3,832
W. Pacific areas	N/A	N/A	$8,623	8,623
Idaho	0.0071175	7,794	N/A	7,794
Illinois	0.0312531	34,222	N/A	34,222
Indiana	0.0289595	31,711	N/A	31,711
Iowa	0.0186702	20,444	N/A	20,444
Kansas	0.0139742	15,302	N/A	15,302
Kentucky	0.0327309	35,840	N/A	35,840
Louisiana	0.0244603	26,784	N/A	26,784
Maine	0.0105963	11,603	N/A	11,603
Massachusetts	0.0129624	14,194	N/A	14,194
Connecticut	0.0077726	8,511	N/A	8,511
Rhode Island	0.0016268	1,781	N/A	1,781
Michigan	0.0366125	40,091	N/A	40,091
Minnesota	0.0213380	23,365	N/A	23,365
Mississippi	0.0243847	26,701	N/A	26,701
Missouri	0.0261878	28,676	N/A	28,676
Montana	0.0060465	6,621	N/A	6,621
Nebraska	0.0089233	9,771	N/A	9,771

FARMERS HOME ADMINISTRATION FISCAL YEAR 1991 ALLOCATION—SECTION 502 SUBSIDIZED RURAL HOUSING LOANS—Continued

[In thousands]

States	State basic formula factor	State basic formula allocation	Administrative allocation	Total FY 1991 allocation
New Jersey	0.0103001	11,279	N/A	11,279
New Mexico	0.0087038	9,531	N/A	9,531
New York	0.0366806	40,165	N/A	40,165
North Carolina	0.0492275	53,904	N/A	53,904
North Dakota	0.0050541	5,534	N/A	5,534
Ohio	0.0426761	46,730	N/A	46,730
Oklahoma	0.0179142	19,616	N/A	19,616
Oregon	0.0146749	16,069	N/A	16,069
Pennsylvania	0.0508513	55,682	N/A	55,682
Puerto Rico	0.0264217	28,932	N/A	28,932
South Carolina	0.0249570	27,328	N/A	27,328
South Dakota	0.0061927	6,781	N/A	6,781
Tennessee	0.0309862	33,930	N/A	33,930
Texas	0.0550670	60,300	N/A	60,300
Utah	0.0040623	4,448	N/A	4,448
Vermont	0.0050786	5,561	N/A	5,561
New Hampshire	0.0064943	7,111	N/A	7,111
Virgin Islands	N/A	N/A	3,178	3,178
Virginia	0.0312105	34,176	N/A	34,176
Washington	0.0172367	18,874	N/A	18,874
West Virginia	0.0201561	22,071	N/A	22,071
Wisconsin	0.0249425	27,312	N/A	27,312
Wyoming	0.0036156	3,959	N/A	3,959
State totals	1.000000	$1,095,003	$11,801	$1,106,804
General reserve				50,971
Designated reserves				118,676
Total				$1,276,451

FARMERS HOME ADMINISTRATION FISCAL YEAR 1991 ALLOCATION—SECTION 504 RURAL HOUSING LOANS

[In thousands]

States	State Basic formula factor	State Basic formula allocation	Administrative allocation	Total FY 1991 allocation
Alabama	0.0320885	$292	N/A	$292
Alaska	0.0054368	49	N/A	49
Arizona	0.0128086	116	N/A	116
Arkansas	0.0233933	213	N/A	213
California	0.0382217	348	N/A	348
Nevada	0.0020080	18	N/A	18
Colorado	0.0082739	75	N/A	75
Delaware	0.0023322	21	N/A	21
Maryland	0.0110190	100	N/A	100
Florida	0.0255397	232	N/A	232
Georgia	0.0398597	362	N/A	362
Hawaii	0.0043287	39	N/A	39
W. Pacific areas	N/A	N/A	$754	754
Idaho	0.0065869	60	N/A	60
Illinois	0.0278824	253	N/A	253
Indiana	0.0247710	225	N/A	225
Iowa	0.0160166	146	N/A	146
Kansas	0.0121380	110	N/A	110
Kentucky	0.0386225	351	N/A	351
Louisiana	0.0287658	262	N/A	262
Maine	0.0102204	93	N/A	93
Massachusetts	0.0099047	90	N/A	90
Connecticut	0.0052081	47	N/A	47
Rhode Island	0.0012330	11	N/A	11
Michigan	0.0312370	284	N/A	284
Minnesota	0.0199865	182	N/A	182
Mississippi	0.0293627	267	N/A	267
Missouri	0.0253770	231	N/A	231
Montana	0.0057082	52	N/A	52
Nebraska	0.0076341	69	N/A	69
New Jersey	0.0073155	67	N/A	67
New Mexico	0.0108461	99	N/A	99
New York	0.0291709	265	N/A	265
North Carolina	0.0510866	465	N/A	465
North Dakota	0.0046131	42	N/A	42
Ohio	0.0380786	346	N/A	346
Oklahoma	0.0186377	169	N/A	169
Oregon	0.0133992	122	N/A	122

FARMERS HOME ADMINISTRATION FISCAL YEAR 1991 ALLOCATION—SECTION 504 RURAL HOUSING LOANS—Continued

[In thousands]

States	State Basic formula factor	State Basic formula allocation	Administrative allocation	Total FY 1991 allocation
Pennsylvania	0.0426964	388	N/A	388
Puerto Rico	0.0391381	356	N/A	356
South Carolina	0.0275555	251	N/A	251
South Dakota	0.0060846	55	N/A	55
Tennessee	0.0337289	307	N/A	307
Texas	0.0610594	557	N/A	557
Utah	0.0039662	36	N/A	36
Vermont	0.0042757	39	N/A	39
New Hampshire	0.0053276	48	N/A	48
Virgin Islands	N/A	N/A	25	25
Virginia	0.0341693	311	N/A	311
Washington	0.0157597	143	N/A	143
West Virginia	0.0218476	199	N/A	199
Wisconsin	0.0218587	199	N/A	199
Wyoming	0.0034736	32	N/A	32
State totals	1.0000000	$9,094	$779	$9,873
General reserve				1,060
Designated reserve				397
Total				$11,330

FARMERS HOME ADMINISTRATION FISCAL YEAR 1991 ALLOCATION—SECTION 504 RURAL HOUSING GRANTS

[In thousands]

States	State basic formula factor	State basic formula allocation	Administrative allocation	Total FY 1991 allocation
Alabama	0.0297816	$325	N/A	$325
Alaska	0.0038921	42	N/A	42
Arizona	0.0115529	126	N/A	126
Arkansas	0.0232959	254	N/A	254
California	0.0377267	411	N/A	411
Nevada	0.0018926	21	N/A	21
Colorado	0.0080619	88	N/A	88
Delaware	0.0023480	26	N/A	26
Maryland	0.0107800	118	N/A	118
Florida	0.0291888	318	N/A	318
Georgia	0.0366853	400	N/A	400
Hawaii	0.0036226	40	N/A	40
W. Pacific areas	N/A	N/A	$82	82
Idaho	0.0064993	71	N/A	71
Illinois	0.0312183	340	N/A	340
Indiana	0.0260900	284	N/A	284
Iowa	0.0192762	210	N/A	210
Kansas	0.0147368	161	N/A	161
Kentucky	0.0345704	377	N/A	377
Louisiana	0.0259028	282	N/A	282
Maine	0.0104030	113	N/A	113
Massachusetts	0.0119195	130	N/A	130
Connecticut	0.0063162	69	N/A	69
Rhode Island	0.0014107	15	N/A	15
Michigan	0.0327229	357	N/A	357
Minnesota	0.0220310	240	N/A	240
Mississippi	0.0265367	289	N/A	289
Missouri	0.0276682	302	N/A	302
Montana	0.0057317	62	N/A	62
Nebraska	0.0093409	102	N/A	102
New Jersey	0.0091097	99	N/A	99
New Mexico	0.0090645	99	N/A	99
New York	0.0330185	360	N/A	360
North Carolina	0.0479670	523	N/A	523
North Dakota	0.0051797	56	N/A	56
Ohio	0.0390236	426	N/A	426
Oklahoma	0.0195661	213	N/A	213
Oregon	0.0141739	155	N/A	155
Pennsylvania	0.0481306	525	N/A	525
Puerto Rico	0.0315208	344	N/A	344
South Carolina	0.0246543	269	N/A	269
South Dakota	0.0065659	72	N/A	72
Tennessee	0.0319241	348	N/A	348
Texas	0.0597188	652	N/A	652
Utah	0.0037456	41	N/A	41
Vermont	0.0046306	50	N/A	50

FARMERS HOME ADMINISTRATION FISCAL YEAR 1991 ALLOCATION—SECTION 504 RURAL HOUSING GRANTS—Continued

[In thousands]

States	State basic formula factor	State basic formula allocation	Administrative allocation	Total FY 1991 allocation
New Hampshire	0.0057672	63	N/A	63
Virgin Islands	N/A	N/A	14	14
Virginia	0.0311590	340	N/A	340
Washington	0.0158753	173	N/A	173
West Virginia	0.0203827	222	N/A	222
Wisconsin	0.0243713	266	N/A	266
Wyoming	0.0032478	35	N/A	35
State totals	1.0000000	$10,904	$96	$11,000
General reserve				1,062
Designated reserve				438
Total				$12,500

Dated: December 6, 1990.

La Verne Ausman,

Administrator, Farmers Home Administration.

[FR Doc. 90-30057 Filed 12-21-90; 8:45 am]

BILLING CODE 3410-07-M

DEPARTMENT OF COMMERCE

Bureau of Export Administration

[Docket No. 0106-01]

Edward J. Elkins, Respondent; Order Affecting Export Privileges

On November 16, 1990, the Administrative Law Judge entered his Recommended Decision and Order in the matter referred to above. The Decision and Order, a copy of which is attached hereto and made a part hereof, has been referred to me for final action. I am making one correction to the Decision and Order of the Administrative Law Judge. On page 5 of the Decision and Order, the Administrative Law Judge states (at footnote 5), "The charging letter reflects that the date of the earliest violation charged was May 25, 1985." In fact, the charging letter reflects that the violation charged occurred between March 28, 1985, and May 13, 1985. In all other respects, having examined the record and based on the facts in the case, I hereby affirm the Decision and Order of the Administrative Law Judge. This constitutes final agency action in this matter.

Dated: December 17, 1990.

Joan M. McEntee,

Acting Under Secretary for Export Administration.

Decision and Order

Appearance for Respondent: Mr. Edward J. Elkins (pro se) P.O. Box 351, Bend, Oregon 97709.

Appearance for Agency: Thomas C. Barbour, Esq., Attorney-Advisor, Office of Chief Counsel for Export Administration, U.S. Department of Commerce, Room H-3839, 14th & Constitution Ave., NW., Washington, DC 20230.

Preliminary Statement

In a charging letter dated March 28, 1990 the Office of Export Enforcement charged Respondent Edward J. Elkins with three violations of the Export Administration Act of 1979, as amended (50 U.S.C.A. app. 2401-2420 (Supp. 1989)) (the "Act"), and the implementing Export Administration Regulations (currently codified at 15 CFR Parts 768-799 (1989)) ("the regulations"). Respondent filed an answer and requested a hearing on May 17, 1990. Agency Counsel thereafter moved for summary judgment citing Respondent's criminal conviction which was assertedly based on the same facts as are at issue here. The record reflects that criminal proceedings were initiated and conviction obtained respecting the Respondent in the United States District Court for the Northern District of Georgia, which had jurisdiction of the Respondent and of the charged violations of the criminal law. As noted in the administrative proceeding titled, *In the Matter of Spawr Optical Research, Inc.*, 51 FR 7477 (1986), and subsequent Federal court decision, *Spawr Optical Research, Inc.* v. *Baldridge*, 649 F. Supp. 1366 (D.D.C 1986), factual determinations of a Court of competent jurisdiction are not subject to redetermination before this administrative Tribunal.[1]

Facts

On March 28, 1985, Respondent filed an export license application seeking authorization to export two Lockheed L-100-30 aircraft and aircraft spare parts to Benin, West Africa. At the time he knew or had reason to know that the aircraft and aircraft spare parts were intended for Libya. Incident to that export transaction, Respondent made false and misleading statements of material fact, *i.e.*, that the destination was Benin rather than Libya, the actual destination. On or about May 13, 1985, Respondent exported or caused to be exported from the United States for the ultimate destination in Libya, the two Lockheed L-100-30 aircraft and additional spare parts without the validated export license required by § 772.1(b) of the Regulations.

A criminal indictment was returned against Respondent and a number of other individuals and corporations by a federal grand jury in Atlanta, Georgia on July 27, 1986. The indictment charged, among other matters, the existence of a conspiracy to export U.S.-origin aircraft and spare parts to Libya without the validated export licenses required by the Act and the implementing Regulations. During the period of the alleged violations, the Regulations were continued in effect under authority of the International Economic Emergency Powers Act (50 U.S.C. 1701-1706 (1982)) ("IEEPA"). The indictment alleged that the defendants concealed material facts from the Department of Commerce and other government agencies.[2] Respondent and the others were also charged with the unlawful export of two Lockheed L-100-30 aircraft and additional spare parts from the United

[1] See also, *Manner* 55 FR 19783 (1990) and Petition of *Breau* 565 A.2d 1044 (N.H. 1989) to the same effect with regard to proceedings in foreign courts and other administrative tribunals involving the same facts.

[2] The statute initially cited and principally violated was the Arms Export Control Act, 22 U.S.C. 2778 and the implementing International Traffic in Arms Regulations (ITAR 22 CFR 121-30).

States to Libya without the validated export license required by the Regulations.

On June 5, 1987, following a jury trial, a verdict of guilty was returned against the Respondent on the first two counts of the indictment relating to the same misrepresentations and exports recited above. On August 28, 1987, Respondent was sentenced to 15 years' imprisonment and ordered to pay a criminal fine of $6.6 million dollars.

He thereafter appealed his conviction to the United States Court of Appeals for the Eleventh Circuit. On October 5, 1989, the Eleventh Circuit affirmed Respondent's conviction and, on February 26, 1990, the Supreme Court denied Respondent's petition for writ of certiorari. *United States* v. *Elkins*, 885 F.2d 775 (11th Cir. 1989), *cert. denied*, ——— U.S. ———, 110 S.Ct. 1300 (1990).

Discussion

The disposition of administrative proceedings in summary fashion predicated upon facts found in a criminal proceeding is not open to question. Such process has been approved legislatively and judicially. *Spawr, supra* and the Export Administration Act, 50 U.S.C. app. 2410(h). I conlcude that this is an appropriate case for such summary disposition. Comparing the two charges in this proceeding to the facts alleged and found in the two counts in the criminal case, reflect that the essential facts and elements alleged in this administrative proceeding were found in that judicial criminal proceeding. The fact that this administrative proceeding does not allege or rely upon a conspiracy does not preclude reliance upon the criminal conviction. The facts found in relation to the violations are identical. As in *Spawr, supra* if there is some judicial modification based upon a challenge to the criminal process a peitition to reopen may be made. However, in light of the Supreme Court denial of appellate review, that appears to be unlikely.

The respondents filings also raise the affirmative defense of the statute of limitations. The statute of limitations contained in 28 U.S.C. 2462 applies to enforcement of the Export Administration Act, and the Regulations. It requires that the Agency commence the proceedings within five years from the date of alleged violation occurred.[3] The Agency commenced this administrative proceeding on March 28, 1990 upon filing the charging letter with this Tribunal. *Caldwell* v. *Martin Marietts Corporation*, 638 F.2d 1184 (5th Cir. 1980). While the Courts of Appeal calculate the running of the statute in different ways, the Agency has elected to follow the approach in *Meyers* which would make the filing on the last day of the fifth year timely, particularly since laches does not apply to the federal Government.[4] Those activities constituted violations of; § 787.4 (Acting with knowledge of violation); of § 787.4 (Acting with knowledge of violation); of § 787.5 (Representation and concealment of material facts) and of § 787.6 (Export, diversion reexport, transshipment) of the Regulations, for a total of three violations, each of which involved U.S.-origin commodities controlled under section 5 of the Export Administration Act of 1979, as amended (50 U.S.C.A. 2401–2420 (Supp. 1989)), for national security reasons.[5]

I do not find that there are special circumstances which preclude reliance upon the criminal court's factual findings. Respondents other assertions of error are also devoid of merit.

Conclusion

The results of the criminal proceeding introduced in the course of this adjudication establish that Respondent violated the Act and regulations as charge.

These deliberate violations warrant denial of participation in export of the United States goods and technologies for 20 years.

Order

I. For a period of twenty years from August 28, 1987 the Respondent [6]

Edward J. Elkins
P.O. Box 351
Bend, OR 97709

and all successors, assignees, officers, partners, representatives, agents, and employees hereby are denied all privileges of participating, directly or indirectly, in any manner or capacity, in any transaction involving commodities or technical data exported from the United States in whole or in part, or to be exported, or that are otherwise subject to the Regulations.

II. Participation prohibited in any such transaction, either in the United States or abroad, shall include, but not be limited to , participation:

(i) As a party or as a representative of a party to a validated or general export license application;

(ii) In preparing or filing any export license application or request for reexport authorization, or any document to be submitted therewith;

(iii) In obtaining or using any validated or general export license or other export control document;

(iv) In carrying on negotiations with respect to, or in receiving, ordering, buying, selling, delivering, storing, using, or disposing of, in whole or in part, any commodities or technical data exported from the United States, or to be exported; and

(v) In the financing, forwarding, transporting, or other servicing of such commodities or technical data.

Such denial of export privileges shall extend to those commodities and technical data which are subject to the Act and the Regulations.

III. After notice and opportunity for comment, such denial of export privileges may be made applicable to any person, firm, corporation, or business organization with which the Respondent is now or hereafter may be related by affiliation, ownership, control, position of responsibility, or other connection in the conduct of trade or related services.

IV. All outstanding individual validated export licenses in which Respondent appears or participates, in any manner or capacity, are hereby revoked and shall be returned forthwith to the Office of Export Licensing for cancellation. Further, all of Respondent's privileges of participating, in any manner or capacity, in any special licensing procedure, including, but not limited to, distribution licenses, are hereby revoked.

V. No person, firm, corporation, partnership, or business organization, whether in the United States or elsewhere, without prior disclosure to and specific authorization from the

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[3] *See United States* v. *Meyer*, 808 F.2d 912 (1st Cir. 1987); *United States* v. *Core Laboratories*, 759 F.2d 480 (5th Cir. 1985). *See also In the Matter of Data Systems Engineering, Inc.*, 54 Fed. Reg. 3506 (1989); *In the Matter of Martin Coyle individually and doing business as Datagon, GmbH*, 53 Fed. Reg. 52753 (1988) (administrative proceedings). The charging letter reflects that the date of the earliest violation charged was May 25, 1985.

[4] Nor is the Agency collaterally estopped from use of the facts established in the prior case as the basis for its actions. The indictment was returned on July 27, 1986 and the conviction judgment and commitment dated August 28, 1987. No excuse is offered for the excessive delay in issuing the charging letter.

[5] The violations occurred between March 28, 1985 and May 13, 1985. During that time, as is presently the case, the Regulations were continued in effect by an Executive Order issued under the International Emergency Economic Powers Act (50 U.S.C. 1701–1706 (1982)) (IEEPA). *See* Executive Order 12470 (49 Fed. Reg. 13099, April 3, 1984). The regulations cited were redesignated from the 300 series to the 700 series in September 1988 (53 FR 37751, September 28, 1988).

[6] This is the date on which he was sentenced in the criminal proceeding. The agency's dilatory practice in delaying the issuance of charging letter should not extend the period of denial.

Office of Export Licensing, shall, with respect to commodities and technical data, do any of the following acts, directly or indirectly, or carry on negotiations with respect thereto, in any manner or capacity, on behalf of or in any association with any Respondent or any related person, or whereby any Respondent or any related person may obtain any benefit therefrom or have any interest or participation therein, directly or indirectly:

(i) Apply for, obtain, transfer, or use any license, Shipper's Export Declaration, bill of lading, or other export control document relating to any export, reexport, transshipment, or diversion of any commodity or technical data exported in whole or in part, or to be exported by, to, or for any Respondent or related person denied export privileges, or

(ii) order, buy, receive, use, sell, deliver, store, dispose of, forward, transport, or otherwise service or participate in any export, reexport, transshipment or diversion of any commodity or technical data exported or to be exported from the United States.

VI. This Order as affirmed or modified shall become effective upon entry of the Secretary's final action in this proceeding pursuant to the Act (50 U.S.C.A. app. 2412(c)(1)).

Dated: November 16, 1990.

Hugh J. Dolan,

Administrative Law Judge.

To be considered in the 30 day statutory review process which is mandated by Section 13(c) of the Act, submissions must be received in the Office of the Under Secretary for Export Administration, U.S. Department of Commerce, 14th & Constitution Ave., NW., room 3898B, Washington, DC, 20230, within 12 days. Replies to the other party's submission are to be made within the following 8 days. 15 CFR 788.23(b), 50 FR 53134 (1985). Pursuant to section 13(c)(3) of the Act, the order of the final order of the Under Secretary may be appealed to the U.S. Court of Appeals for the District of Columbia within 15 days of its issuance.

[FR Doc. 90–29999 Filed 12–21–90; 8:45 am]

BILLING CODE 3510–DT–M

International Trade Administration

Advisory Committee on the European Community Common Approach to Standards, Testing and Certification in 1992; Closed Meeting

AGENCY: International Trade Administration, Commerce.

SUMMARY: The Federal Advisory Committee on the European Community Common Approach to Standards, Testing, and Certification in 1992 (the "Committee") was established on February 23, 1990, to advise the Secretary of Commerce for the purpose of keeping him adequately informed regarding EC '92 standards-related activities in order for him to: (a) Identify those standards, testing procedures, and certification processes which may substantially affect the commerce of the United States; (b) represent U.S. interests to EC organizations; and (c) develop strategies for improving the coordination and cooperation of U.S. Federal, State, local, and private sector standards activities.

At the meeting, Committee members may receive classified briefings on the status of ongoing consultations with the European Community and may provide confidential advice on negotiating strategies and objectives to be pursued in discussions with the European Community. Committee members will also discuss drafts of issue papers developed by Committee working groups. These issue papers will provide the basis for a final report to the Secretary in February 1991. Copies of the draft issue papers will be available for public review on January 3, 1991, and comments will be accepted until January 22, 1991. Copies of the papers will be available from Charles M. Ludolph, Director, Office of European Community Affairs, room H3036, U.S. Department of Commerce, Washington, DC 20230, phone (202) 377–5276.

TIME AND PLACE: January 8, 1991 from 10:00–3:30 p.m. The meeting will take place in the Herbert C. Hoover Building, room 6029, 14th and Constitution Avenue, NW., Washington, DC. This meeting will not be open to the public.

FOR FURTHER INFORMATION CONTACT: Charles M. Ludolph, Director, Office of European Community Affairs, room H3036, U.S. Department of Commerce, Washington, DC 20230, phone (202) 377–5276.

SUPPLEMENTARY INFORMATION: The Assistant Secretary for Administration, with the concurrence of the General Counsel, formally determined on December 17, 1990, pursuant to section 10(d) of the Federal Advisory Committee Act, as amended by section 5(c) of the Government in the Sunshine Act, that those meetings, or portions thereof, of the Committee and any subcommittee or work groups shall be exempt from the provisions of section 10 (a)(1) and (a)(3) of the Federal Advisory Committee Act, relating to open meetings nad public participation therein, because such discussions will be concerned with matters listed in 5 U.S.C. 552b(c)(1) and 552b(c)(9)(B). A copy of the Notice of Determination to close meetings or portions of meetings of the Committee is available for public inspection and copying in the International Trade Administration Records Inspection Facility, room 4104, Main Commerce.

Dated: December 18, 1990.

Charles M. Ludolph,

Director, Office of European Community Affairs.

[FR Doc. 90–30083 Filed 12–21–90; 8:45 am]

BILLING CODE 3510–DA–M

National Oceanic and Atmospheric Administration

South Atlantic Fishery Management Council; Public Meetings

AGENCY: National Marine Fisheries Service, NOAA, Commerce.

The South Atlantic Fishery Management Council will hold public meetings of its Law Enforcement Committee and its Law Enforcement Advisory Panel on January 16–17, 1991, at the Town and Country Inn, 2008 Savannah Highway, Charleston, SC.

On January 16 the meeting will begin at 1 p.m., and adjourn at 5 p.m. The Committee and the Advisory Panel will review proposed management measures to Amendment #4 of the Snapper-Grouper Fishery Management Plan (FMP), and will develop preliminary regulation recommendations. Proposed management measures include minimum sizes, gear restrictions, recreational bag limits, commercial quotas and spawning season/area closures. These proposed measures will be presented at public hearings, also in January.

On January 17 the meeting will begin at 8:30 a.m., and adjourn at 5 p.m. The Committee and the Advisory Panel will discuss enforcement activities in the southeast region and the effects of the Magnuson Fishery Conservation and Management Act amendments on law enforcement operations.

Additionally, the Committee and the Advisory Panel will review enforceability of the developing shrimp FMP, which allows states to request closures of federal waters to shrimping when state waters are closed.

For more information contact Carrie Knight, Public Information Officer, South Atlantic Fishery Management Council, One Southpark Circle, suite 306, Charleston, SC 29407, telephone: (803) 571–4366.

Dated: December 18, 1990.

David S. Crestin,

Deputy Director, Office of Fisheries Conservation and Management, National Marine Fisheries Service.

[FR Doc. 90-29979 Filed 12-21-90; 8:45 am]

BILLING CODE 3510-28-M

COMMITTEE FOR THE IMPLEMENTATION OF TEXTILE AGREEMENTS

Adjustment of Import Limits for Certain Cotton, Wool, Man-Made Fiber, Silk Blend and Other Vegetable Fiber Textiles and Textile Products Produced or Manufactured in Macau

December 19, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs increasing limits.

EFFECTIVE DATE: December 27, 1990.

FOR FURTHER INFORMATION CONTACT: Janet Heinzen, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343-6495. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The current limits for certain categories are being increased, variously, for carryforward and swing.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Aslo see 54 FR 52437, published on December 21, 1989.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Commissioner of Customs,
Department of the Treasury, Washington, DC 20229.

December 19, 1990.

Dear Commissioner: This directive amends, but does not cancel, the directive of December 15, 1989 issued to you by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports into the United States of certain cotton, wool, man-made fiber, silk blend and other vegetable fiber textiles and textile products, produced or manufactured in Macau and exported during the twelve-month period which began on January 1, 1990 and extends through December 31, 1990.

Effective on December 27, 1990, the directive of December 15, 1989 is amended further to increase the limits for the following categories, as provided under the terms of the current bilateral agreement between the Governments of the United States and Macau:

Category	Adjusted twelve-month limit [1]
Aggregate: 200-239, 300-369, 400-469, 600-670 and 800-899, as a group.	85,260,537 square meters equivalent.
Group I: 200-239, 300-369, 600-670 and 800-899, as a group.	81,192,130 square meters equivalent.
Sublevels in Group I: 333/334/335/833/834/835.	187,045 dozen of which not more than 98,527 dozen shall be in Categories 333/335/833/835.
338	231,543 dozen.
339	979,105 dozen.
340	227,641 dozen.
347/348/847	566,907 dozen.
641/840	150,410 dozen.
647/648	414,694 dozen.

[1] The limits have not been adjusted to account for any imports exported after December 31, 1989.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-30081 Filed 12-21-90; 8:45 am]

BILLING CODE 3510-DR-M

Establishment and Amendment of Import Limits for Certain Cotton and Man-Made Fiber Textile Products Produced or Manufactured in Nepal

December 18, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing and amending limits.

EFFECTIVE DATES: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-reopenings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended.

(7 U.S.C. 1854).

During recent negotiations between the Governments of the United States and Nepal, agreement was reached to extend the Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended, for three consecutive one-year periods, beginning on January 1, 1991 and extending through December 31, 1993.

In the letter published below, the Chairman of CITA directs the Commissioner of Customs to amend the current limits for Categories 340 and 341 and to establish new limits for Categories 640 and 641.

A description of the textile and apparel categories in terms of HTS numbers is available in the correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989). Also see 55 FR 38831, published on September 21, 1990; and 55 FR 42426, published on October 19, 1990.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 18, 1990.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: This directive amends, but does not cancel, the directive issued to you on December 21, 1989 by the Chairman, Committee for the Implementation of Textile Agreements. That directive concerns imports of certain cotton textile products, produced or manufactured in Nepal and exported during the period which began on January 1, 1990 and extends through December 31, 1990.

Effective on January 1, 1991, you are directed to amend the current limits for Categories 340 and 341 and to establish new limits for Categories 640 and 641 for the periods indicated below:

Category:	Amended Restraint Limit [1] (Jan. 1,1990–Dec. 31, 1990)
340.....	204,521 dozen.
341.....	681,738 dozen.
	New Restraint Limit [2] (Sept. 25, 1990–Dec. 31, 1990)
640.....	27,637 dozen.
	(Aug. 29, 1990–Dec. 31, 1990)
641.....	79,484 dozen.

[1] The limits have not been adjusted to account for any imports exported after Dec. 31, 1989.
[2] The limits have not been adjusted to account for any imports exported after Sept. 24, 1990, in the case of Category 640; and Aug. 28, 1990, in the case of Category 641.

Textile products which have been exported to the United States prior to September 25, 1990, in the case of Category 640; and August 29, 1990, in the case of Category 641, shall not be subject to this directive.

Textile products in Categories 641 and 640 which have been released from the custody of the U.S. Customs Service under the provisions of 19 U.S.C. 1448(b) or 1484(a)(1)(A) prior to the effective date of this directive shall not denied entry under this directive.

You are directed to charge 13,215 dozen to the limit established in this directive for Category 641. These charges are for goods imported during the period August 29–September 30, 1990. For the import period September 25–30, 1990, there are no charges to be made to Category 640.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–29995 Filed 12–21–90; 8:45 am]

BILLING CODE 3510–DR–M

Announcement of Import Limits and Amendment of Visa Requirements for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Republic of Turkey

December 19, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing new agreement year limits and amending visa requirements.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 343–6582. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority. Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Memorandum of Understanding (MOU) dated November 7, 1990 between the Government of the United States and the Republic of Turkey establishes limits for the agreement period beginning on January 1, 1991 and extending through December 31, 1991.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 54 FR 50797, published on December 11, 1989).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Auggie D.Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

December 19, 1990.

Commissioner of Customs,

Department of the Treasury, Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C.) 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Memorandum of Understanding dated November 7, 1990 between the Government of the United States and the Republic of Turkey; and in accordance with the provisions of Executive Order 11651 on March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Turkey and exported during the twelve-month period which begins on January 1, 1991 and extends through December 31, 1991, in excess of the following restraint limits:

Category	Twelve-month limit
219, 313, 314, 315, 317, 326, 617, 625, 626, 627 and 628, as a group.	100,241,737 square meters of which not more than, 23,251,950 square meters shall be in 219, 28,419,049 square meters shall be in 313, 16,534,719 square meters shall be in 314, 22,218,529 square meters shall be in 315, 23,251,950 square meters shall be in 317, 2,583,550 square meters shall be in 326, 15,501,300 square meters shall be in 617, 2,583,550 square meters shall be in 625, 2,583,550 square meters shall be in 626, 2,583,550 square meters shall be in 627, 2,583,550 square meters shall be in 628.
Limits not in a Group	
200	879,158 kilograms.
300/301	4,280,559 kilograms.
335	146,293 dozen.
336/636	366,548 dozen.
338/339	2,350,020 dozen of which not more than 1,278,095 dozen shall be in Categories 338–S/339–S.[1]
340/640	700,877 Dozen of which not more than 280,351 dozen shall be in shirts made from fabric of two or more colors in the warp and/or the filling in Categories 340–y/640–Y.[2]
341/641	851,760 dozen of which not more than 298,116 dozen shall be in blouses made from fabric of two or more colors in the warp and/or the filling in Categories 341–Y641–Y.[3]
342/642	410,305 dozen.
347/348	2,232,678 dozen of which not more than 930,481 dozen shall be in trousers in Categories 347–T/348–T.[4]
350	242,600 dozen.
351/651	393,260 dozen.
361	842,700 numbers.
369–S [5]	996,888 kilograms.
410/624	935,000 square meters of which not more than 605,000 square meters shall be in Category 410.
448	26,250 dozen.
604	1,102,756 kilograms.

[1] Category 338–S: Only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339–S: Only HTS numbers 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

[2] Category 340–Y: Only HTS numbers 6205.20.2015, 6205.20.2020, 6205.20.2046, 6205.20.2050 and 6205.20.2060; Category 640–Y: only HTS numbers 6205.30.2010, 6205.30.2020, 6205.30.2050 and 6205.30.2060.

[3] Category 341–Y: Only HTS numbers 6204.22.3060, 6206.30.3010 and 6206.30.3030; Category 641–Y: only HTS numbers 6204.23.0050, 6204.29.2030, 6206.40.3010 and 6206.40.3025.

[4] Category 347–T: Only HTS numbers 6103.19.2015, 6103.19.4020, 6103.22.0030, 6103.42.1020, 6103.42.1040, 6103.49.3010, 6112.11.0050, 6113.00.0035, 6203.19.1020,

6203.19.4020, 6203.22.3020, 6203.42.4005, 6203.42.4010, 6203.42.4015, 6203.42.4025, 6203.42.4035, 6203.42.4045, 6203.49.3020, 6210.40.2030, 6211.20.1520, 6211.20.3010 and 6211.32.0040; Category 348-T: Only 6104.12.0030, 6104.19.2030, 6104.22.0040, 6104.29.2034, 6104.62.2010, 6104.62.2025, 6104.69.3022, 6112.11.0060, 6113.00.0040, 6117.90.0042, 6204.12.0030, 6204.19.3030, 6204.22.3040, 6204.29.4034, 6204.62.3000, 6204.62.4005, 6204.62.4010, 6204.62.4020, 6204.62.4030, 6204.62.4040, 6204.62.4050, 6204.69.3010, 6204.69.9010, 6210.50.2030, 6211.20.1550, 6211.20.6010, 6211.42.0030 and 6217.90.0050.

[5] Category 369-S: Only HTS number 6307.10.2005.

Imports charged to these category limits, except 641, for the periods July 1, 1989 through June 30, 1990; December 1, 1989 through June 30, 1990 and July 1, 1990 through December 31, 1990, shall be charged against those levels of restraint to the extent of any unfilled balances. In the event the limits established for these periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

Also effective on January 1, 1991, you are directed to amend the directive dated March 2, 1987, as amended, to include coverage of merged Categories 341/641. Merchandise in Categories 341/641 must be accompanied by either the correct merged category or the correct category corresponding to the actual shipment. Merchandise in Category 641 which is exported from Turkey prior to January 1, 1991 shall not be subject to visa requirements.

Merchandise in Category 237, produced or manufactured in Turkey and exported from Turkey on and after January 1, 1991 shall no longer be subject to visa requirements.

In carrying out the directions, the Commissioner of Customs should construe entry into the United States of consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception of the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-30082 Filed 12-21-90; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits for Certain Cotton, Wool and Man-Made Fiber Textile Products Produced or Manufactured in the Socialist Federal Republic of Yugoslavia

December 18, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Naomi Freeman, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377-4212. For information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202) 566-5810. For information on embargoes and quota re-openings, call (202) 377-3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854.)

A Memorandum of Understanding (MOU) dated January 18, 1990 between the Governments of the United States and the socialist Federal Republic of Yugoslavia establishes limits for the period January 1, 1991 through December 31, 1991. The 1991 level for Category 618 will be zero.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990).

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the MOU, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committe for the Implementation of Textile Agreements.

Committee for the Implementation of Textile Agreements

December 18, 1990.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854), and the Arrangement Regarding International Trade in Textiles done at Geneva on December 20, 1973, as further amended on July 31, 1986; pursuant to the Bilateral Cotton, Wool and Man-Made Fiber Textile Agreement of October 26 and 27, 1978, as amended and extended by the Memorandum of Understanding dated January 18, 1990, between the Governments of the United States and the Socialist Federal Republic of Yugoslavia; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton, wool and man-made fiber textile products in the following categories, produced or manufactured in Yugoslavia and exported during the twelve-month period beginning on January 1, 1991 and extending through December 31, 1991, in excess of the following limits:

Category	12-mo restraint limit
300/301	1,783,798 kilograms.
338/339	524,047 dozen of which not more than 314,428 dozen shall be in Categories 338-S/339-S.[1]
340/640	454,997 dozen.
341/641	296,682 dozen.
410	505,000 square meters.
433	8,139 dozen.
434	9,023 dozen.
435	39,807 dozen.
442	11,188 dozen.
443/643	342,827 numbers of which not more than 107,194 numbers shall be in Category 443.
444	93,915 numbers.
447/448	49,891 dozen of which not more than 31,585 dozen shall be in Category 447 and not more than 31,585 dozen shall be in Category 448.
604-A [2]	343,591 kilograms.
611	11,213,611 square meters.
618	None.
624	3,787,500 square meters.
666-B [3]	1,026,448 kilograms.

[1] Category 338-S: only HTS numbers 6103.22.0050, 6105.10.0010, 6105.10.0030, 6105.90.3010, 6109.10.0027, 6110.20.1025, 6110.20.2040, 6110.20.2065, 6110.90.0068, 6112.11.0030 and 6114.20.0005; Category 339-S: only HTS numbers 6104.22.0060, 6104.29.2046, 6106.10.0010, 6106.10.0030, 6106.90.2010, 6106.90.3010, 6109.10.0070, 6110.20.1030, 6110.20.2045, 6110.20.2075, 6110.90.0070, 6112.11.0040, 6114.20.0010 and 6117.90.0022.

[2] Category 604-A: only HTS number 5509.32.0000.

[3] Category 666-B: only HTS numbers 6301.10.0000, 6301.40.0010, 6301.40.0020, 6301.90.0010.

Imports charged to these category limits for the period January 1, 1990 through December 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for that period have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90-29997 Filed 12-21-90; 8:45 am]

BILLING CODE 3510-DR-M

Announcement of Import Limits and Export Visa Requirements for Certain Cotton Textile Products Produced or Manufactured in Nepal

December 18, 1990.

AGENCY: Committee for the Implementation of Textile Agreements (CITA).

ACTION: Issuing a directive to the Commissioner of Customs establishing limits for the new agreement year and amending visa requirements.

EFFECTIVE DATE: January 1, 1991.

FOR FURTHER INFORMATION CONTACT: Anne Novak, International Trade Specialist, Office of Textiles and Apparel, U.S. Department of Commerce, (202) 377–4212. For further information on the quota status of these limits, refer to the Quota Status Reports posted on the bulletin boards of each Customs port or call (202)566–5810. For information on embargoes and quota re-openings, call (202) 377–3715.

SUPPLEMENTARY INFORMATION:

Authority: Executive Order 11651 of March 3, 1972, as amended; Section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854).

The Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended, establishes limits for the 1991 agreement year.

A description of the textile and apparel categories in terms of HTS numbers is available in the Correlation: Textile and Apparel Categories with the Harmonized Tariff Schedule of the United States (see **Federal Register** notice 55 FR 50756, published on December 10, 1990). Also see 52 FR 11724, published on April 10, 1987.

The letter to the Commissioner of Customs and the actions taken pursuant to it are not designed to implement all of the provisions of the bilateral agreement, but are designed to assist only in the implementation of certain of its provisions.

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreement.

December 18, 1990.

Commissioner of Customs,
Department of the Treasury,
Washington, DC 20229.

Dear Commissioner: Under the terms of section 204 of the Agricultural Act of 1956, as amended (7 U.S.C. 1854); pursuant to the Bilateral Textile Agreement, effected by exchange of notes dated May 30 and June 1, 1986, as amended and extended, between the Governments of the United States and Nepal; and in accordance with the provisions of Executive Order 11651 of March 3, 1972, as amended, you are directed to prohibit, effective on January 1, 1991, entry into the United States for consumption and withdrawal from warehouse for consumption of cotton textile products in the following categories, produced or manufactured in Nepal and exported during the twelve-month period beginning on January 1, 1991 and extending through December 31, 1991, in excess of the following restraint limits:

Category	12-mo. restraint limit
340	216,793 dozen.
341	722,643 dozen.
342	133,823 dozen.
347/348	506,744 dozen.
640	109,111 dozen.
641	246,018 dozen.

Imports charged to these category limits for the periods beginning on January 1, 1990, August 29, 1990 and September 25, 1990 and extending through December 31, 1990 shall be charged against the levels of restraint to the extent of any unfilled balances. In the event the limits established for these periods have been exhausted by previous entries, such goods shall be subject to the levels set forth in this directive.

The limits set forth above are subject to adjustment in the future according to the provisions of the current bilateral agreement, as amended and extended, between the Governments of the United States and Nepal.

For visa purposes, effective on January 1, 1991, you are directed to amend the directive of April 3, 1987 to include coverage of man-made fiber textile products in Categories 600–670, produced or manufactured in Nepal and exported from Nepal on and after January 1, 1991.

In carrying out the above directions, the Commissioner of Customs should construe entry into the United States for consumption to include entry for consumption into the Commonwealth of Puerto Rico.

The Committee for the Implementation of Textile Agreements has determined that these actions fall within the foreign affairs exception to the rulemaking provisions of 5 U.S.C. 553(a)(1).

Sincerely,

Auggie D. Tantillo,

Chairman, Committee for the Implementation of Textile Agreements.

[FR Doc. 90–29998 Filed 12–21–90; 8:45 am]

BILLING CODE 3510–DR–M

DEPARTMENT OF DEFENSE

DEPARTMENT OF THE NAVY

Patent Licenses, Exclusive: Somatogenetics International, Inc., et al.

AGENCY: Department of the Navy, Defense.

ACTION: Intent to grant co-exclusive patent licenses; Somatogenetics International, Inc., and Vestar, Inc.

SUMMARY: The Department of the Navy hereby gives notice of its intent to grant revocable, nonassignable, coexclusive licenses in the United States and certain foreign countries to practice the Government-owned inventions described in U.S. Patent No. 4,776,991, "Scaled-Up Production of Liposome-Encapsulated Hemoglobin," issued October 11, 1988, and U.S. Patent No. 4,911,929, "Blood Substitute Comprising Liposome-Encapsulated Hemoglobin," issued March 27, 1990 to Somatogenetics International, Inc., and to Vestar, Inc.

Anyone wishing to object to the grant of these licenses has 60 days from the date of this notice to file written objections along with supporting evidence, if any. Written objections are to be filed with the Office of the Chief of Naval Research (Code OOCCIP), Arlington, Virginia 22217–5000.

DATES: November 7, 1990.

FOR FURTHER INFORMATION CONTACT: Mr. R.J. Erickson, Staff Patent Attorney, Office of the Chief of Naval Research (Code OOCCIP), 800 N. Quincy Street, Arlington, Virginia 22217–5000, telephone (703) 696–4001.

Dated: December 13, 1990.

Wayne T. Baucino,

LT, JAGC, USNR, Alternate Federal Register Liaison Officer.

[FR Doc. 90–29945 Filed 12–21–90; 8:45 am]

BILLING CODE 3810–AE–M

DEPARTMENT OF EDUCATION

National Assessment Governing Board; Teleconference Meeting

AGENCY: National Assessment Governing Board, Education.

ACTION: Notice of meeting.

SUMMARY: This notice sets forth the schedule and proposed agenda of a forthcoming teleconference meeting of the Executive Committee of the National Assessment Governing Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: January 7, 1991.

TIME: 11 a.m. e.s.t.

PLACE: National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC, 20005–4013. Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board

is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by the section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins—Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297), (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. It is responsible for developing specifications for test design and methodology and for developing guidelines and standards for analysis plans and for reporting and disseminating results. The Board also has responsibility for selecting subject areas to be assessed, identifying achievement goals for each age and grade tested, and establishing standards and procedures for interstate, regional, and national comparisons. The Executive Committee of the National Assessment Governing Board will meet via teleconference on January 7, 1991, from 11 a.m. e.s.t. until the completion of business. Because this is a teleconference meeting, facilities will be provided so the public will have access to the Committee's deliberations. The purpose of this meeting is to review issues that should be considered for the reauthorization of the National Assessment of Educational Progress.

Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, suite 7322, 1100 L Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m., Monday through Friday.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement.

[FR Doc. 90–30012 Filed 12–21–90; 8:45 am]

BILLING CODE 4000–01–M

National Assessment Governing Board; Meeting

AGENCY: National Assessment Governing Board; Education.

ACTION: Notice of meeting.

SUMMARY: The National Assessment Governing Board is announcing a joint meeting of its Executive and Achievement Levels Committees. This notice sets forth the schedule and proposed agenda for the forthcoming meeting. This notice also describes the functions of the Board. Notice of this meeting is required under section 10(a)(2) of the Federal Advisory Committee Act. This document is intended to notify the general public of their opportunity to attend.

DATE: January 22, 1991.

TIME: 8:30 a.m. to 5 p.m.

PLACE: Brown Palace Hotel, 321 17th Street, Denver, Colorado.

FOR FURTHER INFORMATION CONTACT: Roy Truby, Executive Director, National Assessment Governing Board, U.S. Department of Education, 1100 L Street, NW., Washington, DC, 20005–4013. Telephone: (202) 357–6938.

SUPPLEMENTARY INFORMATION: The National Assessment Governing Board (NAGB) is established under section 406(i) of the General Education Provisions Act (GEPA) as amended by section 3403 of the National Assessment of Educational Progress Improvement Act (NAEP Improvement Act), title III–C of the Augustus F. Hawkins-Robert T. Stafford Elementary and Secondary School Improvement Amendments of 1988 (Pub. L. 100–297); (20 U.S.C. 1221e–1).

The Board is established to formulate policy guidelines for the National Assessment of Educational Progress. It is responsible for developing specifications for test design and methodology and for developing guidelines and standards for analysis plans and for reporting and disseminating results. The Board also has responsibility for selecting subject areas to be assessed, identifying achievement goals for each age and grade tested, and establishing standards and procedures for interstate, regional, and national comparisons. The Executive Committee and the Achievement Levels Committee will meet jointly on January 22, 1991, from 9 a.m. until 5 p.m. at the Brown Palace Hotel, Denver Colorado. The purpose of this meeting is to review the data received in response to the Board's proposal to establish achievement levels for the 1990 mathematics assessment. The committees, also, will formulate recommendations for the Board's final action on its achievement levels proposal. Records are kept of all Board proceedings and are available for public inspection at the U.S. Department of Education, National Assessment Governing Board, Suite 7322, 1100 L Street, NW., Washington, DC, from 8:30 a.m. to 5 p.m.

Christopher T. Cross,

Assistant Secretary for Educational Research and Improvement

[FR Doc. 90–30013 Filed 12–21–90; 8:45 am]

BILLING CODE 4000–01–M

DEPARTMENT OF ENERGY

Bonneville Power Administration

Intent to Revise Transmission Rates to Become Effective October 1, 1991; Request for Comments

AGENCY: Bonneville Power Administration (BPA), DOE.

ACTION: Notice of intent and request for comments. *BPA File No.:* TR–91. BPA requests that all comments and documents to become part of the Official Record compiled in the process of adjusting transmission rates contain the file number designation TR–91.

SUMMARY: BPA is developing adjusted transmission rates proposed to become effective October 1, 1991. At this time, BPA announces its intent to revise its rates and seeks comments that BPA can use to develop its proposals. BPA expects to publish a notice of the proposed rates in the **Federal Register** in February 1991.

The February notice will also announce BPA's proposed schedule for formal hearings as specified in section 7(i) of the Pacific Northwest Electric Power Planning and Conservation Act (Northwest Power Act). A final schedule will be established by the Hearing Officer who presides over BPA's rate hearings. These hearings, and informal field hearings, will give interested persons an opportunity to present oral and written comments on the proposal.

DATES: Comments concerning the development of proposed transmission rates will be accepted through 4 p.m., January 18, 1991. This proceeding is a general rate proceeding under procedures governing BPA rate hearings. 51 FR 7611, March 5, 1986. Pursuant to the ex parte limitations contained in these procedures, BPA will not accept oral recommendations on substantive issues except in meetings for which notice has been given.

Responsible Official: Mr. Sydney Berwager, Director, Division of Contracts and Rates, is the official responsible for the development of BPA rates.

ADDRESSES: Written comments should be submitted to the Public Involvement Manager, Bonneville Power Administration, P.O. Box 12999, Portland, Oregon 97212.

FOR FURTHER INFORMATION CONTACT: Ms. Shirley Price, Public Involvement Office, at the address listed above, 503–230–3478. Oregon callers outside Portland may use 800–452–8429; callers in California, Idaho, Montana, Nevada, Utah, Washington, and Wyoming may

use 800–547–6048. Information may also be obtained from:

Mr. George Gwinnutt, Lower Columbia Area Manager, suite 243, 1500 Plaza Building, 1500 NE. Irving Street, Portland, Oregon 97232, 501–230–4551.

Mr. Robert N. Laffel, Eugene District Manager, room 206, 211 East Seventh Avenue, Eugene, Oregon 97401, 501–687–6952.

Mr. Wayne R. Lee, Upper Columbia Area Manager, room 561, West 920 Riverside Avenue, Spokane, Washington 99201, 509–353–2518.

Mr. George E. Eskridge, Montana District Manager, 800 Kensington, Missoula, Montana 59801, 406–329–3060.

Mr. Ronald K. Rodewald, Wenatchee District Manager, room 307, 301 Yakima Street, Wenatchee, Washington 98807-0741, 509–662–4377, extension 379.

Mr. Terence G. Esvelt, Puget Sound Area Manager, P.O. Box C19030, suite 400, 201 Queen Anne Avenue North, Seattle, Washington 98109-1030, 206–442–4130.

Mr. Thomas V. Wagenhoffer, Snake River Area Manager, 101 West Poplar, Walla Walla, Washington 99362, 509–522–6226.

Mr. Richard J. Itami, Idaho Falls District Manager, 1527 Hollipark Drive, Idaho Falls, Idaho 83401, 208–523–2706.

Mr. Thomas H. Blankenship, Boise District Manager, room 450, 304 N. 8th Street, Boise, Idaho 83702, 208–334–9137.

SUPPLEMENTARY INFORMATION: The Federal Columbia River Transmission System (FCRTS) is owned and operated by BPA, U.S. Department of Energy. The FCRTS encompasses approximately 80 percent of the capacity of the high-voltage electric transmission system within the Pacific Northwest. Electric power from Federal and non-Federal generating units is integrated and transmitted utilizing the FCRTS. Interregional transmission services to customers outside the Pacific Northwest are also provided by BPA. Studies to determine the adequacy of current transmission rates and rate designs are currently being developed by BPA. Transmission rate adjustments may be necessary to cover changing FCRTS costs.

Current rates apply for four types of transmission service: (1) Firm integration of utilities' remote resources; (2) firm system exports; (3) nonfirm interconnections between systems both within and outside the Pacific Northwest region; and (4) firm transmission over specified facilities. Firm transmission is sold through contracts for periods up to 20 years. Firm transmission on BPA's network (main grid) is available on a mileage basis as well as a postage stamp rate structure.

BPA plans to continue the development and application of the existing transmission rate schedules. BPA anticipates that the availability of these schedules will remain unchanged with one exception: The availability of the ET rate schedule would be extended to cover both short-term (up to 1 year) firm and nonfirm transactions. (Currently, only nonfirm transactions are allowed.) BPA invites comments and recommendations on this proposed change.

In order to be considered in the development of BPA's initial proposal, comments must be in writing and be submitted no later than 4 p.m., January 18, 1991. Oral communications should be for the purpose of requesting either status reports or procedural information. Following publication of the initial proposal in the **Federal Register** (on or about February 11, 1991), both general public field hearings and formal public hearings will be conducted by BPA. Written comments will also be accepted throughout the 5 month hearing process. A final comment deadline will be announced in a future **Federal Register** notice. After completion of an environmental process pursuant to the National Environmental Policy Act and following the hearings, BPA will announce its final proposed transmission rates and submit them by August 2, 1991, to the Federal Energy Regulatory Commission for approval.

Issued in Portland, Oregon, on December 13, 1990.

Steven G. Hickok,

Executive Assistant Administrator, Bonneville Power Administration.

[FR Doc. 90–30072 Filed 12–21–90; 8:45 am]

BILLING CODE 8450–01–M

Federal Energy Regulatory Commission

[Docket Nos. ER91–150–000, et al.]

Southern Company Services, Inc., et al.; Electric rate, Small power production, and Interlocking Directorate filings

Take notice that the following filings have been made with the Commission:

1. Southern Company Services, Inc.

[Docket No. ER91–150–000]

December 14, 1990.

Take notice that on December 7, 1990, Southern Company Services, Inc. acting on behalf of Alabama Power Company, Georgia Power Company, Gulf Power Company, Mississippi Power Company and Savannah Electric and Power Company (Southern Companies) tendered for filing a unit power sales contract between Southern Companies and the City of Tallahassee, Florida (City). The UPS Agreement between Southern Companies and City provides for up to 125 megawatts of unit power sales from designated coal-fired generating units owned by Alabama Power Company, Georgia Power Company and Gulf Power Company during the period December 8, 1990 through May 31, 2000. Southern Company Services, Inc. also tendered, as part of the same filing, a notice of cancellation, to be effective December 8, 1990, for rate schedules covering sales by the same companies to City under an earlier agreement, effective April 22, 1985.

Comment date: December 27, 1990, in accordance with Standard Paragraph E at the end of this notice.

2. Interstate Power Co.

[Docket No. EL90–38–000]

December 14, 1990.

Take notice that on November 19, 1990, as supplemented by a filing of November 29, 1990, Interstate Power Company tendered for filing its compliance filing in response to the earlier Commission order of October 18, 1990 in this docket.

Comment date: December 26, 1990, in accordance with Standard Paragraph E at the end of this notice.

3. The Connecticut National Bank

[Docket No. QF88–21–003]

December 17, 1990.

On December 7, 1990, The Connecticut National Bank, of 777 Main Street, Hartford, Connecticut 06114, submitted for filing an application for recertification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's Regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in Pittsfield, Massachusetts. The facility will consist of three combustion turbine generators, three heat recovery boilers and one extraction/condensing steam turbine generator. Thermal energy recovered from the facility will be used by General Electric for various processes. The primary energy source will be natural gas.

The original certification was issued on January 14, 1988 (42 FERC ¶ 62,021 (1988)). The instant recertification is requested due to a change of ownership from Altresco Pittsfield, L.P. to The Connecticut National Bank and a decrease in the net electric power production capacity from 162.73 MW to 161.17 MW.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

4. Nissequogue Cogen Partners

[Docket No. QF91-38-000]

December 17, 1990.

On December 6, 1990, Nissequogue Cogen Partners (Applicant), c/o CEA USA, Inc., of 1200 E. Ridgewood Avenue, Ridgewood, New Jersey 07450-3939, submitted for filing an application for certification of a facility as a qualifying cogeneration facility pursuant to § 292.207 of the Commission's regulations. No determination has been made that the submittal constitutes a complete filing.

The topping-cycle cogeneration facility will be located in the Town of Brookhaven, Suffolk County, New York. The facility will consist of a combination turbine/generator and a heat recovery boiler. The thermal energy recovered from the facility, in the form of steam, will be used to meet the thermal requirements of the Academic Campus and the Health and Science Campus of the State University of New York at Stony Brook. The net electric power production capacity of the facility will be 41.185 MW. The primary energy source will be natural gas.

The facility will be owned by a partnership consisting of equal general partners, CEA Stony Brook, Inc (CEAS) and Stony Brook Cogeneration Inc. (SBC). CEAS is an indirect, wholly owned subsidiary of Community Energy Alternatives Incorporated, which, in turn, is an indirect, wholly-owned subsidiary of Public Service Enterprise Group Incorporated, an electric utility holding company. SBC is an indirect, wholly-owned subsidiary of Brooklyn Union Gas Company.

Comment date: Thirty days from publication in the **Federal Register**, in accordance with Standard Paragraph E at the end of this notice.

Standard Paragraphs

E. Any person desiring to be heard or to protest said filing should file a motion to intervene or protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 211 and 214 of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385-214). All such motions or protests should be filed on or before the comment date. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Any person wishing to become a party must file a motion to intervene. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-29964 Filed 12-21-90; 8:45 am]

BILLING CODE 6717-01-M

[Project No. 10882-000, California]

Norman Ross Burgess; Availability of Environmental Assessment

December 17, 1990.

In accordance with the National Environmental Policy Act of 1969 and the Federal Energy Regulatory Commission's (Commission's) regulations, 18 CFR part 380 (Order No. 486, 52 FR 47897), the Office of Hydropower Licensing has reviewed the application for minor license for the proposed Three Forks Hydroelectric Project located on Mud, Middle, and Rock Creeks in Trinity County, near Zenia, California, and has prepared an Environmental Assessment (EA) for the proposed project. In the EA, the Commission's staff has analyzed the project and has concluded that approval of the proposed project, with appropriate mitigation measures, would not constitute a major federal action significantly affecting the quality of the human environment.

Copies of the EA are available for review in the Public Reference Branch, room 3308, of the Commission's offices at 914 North Capitol Street, NE., Washington, DC 20426.

Lois D. Cashell,

Secretary.

[FR Doc. 90-29963 Filed 12-21-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket Nos. CP91-636-000, et al.]

Florida Gas Transmission Company, et al.; Natural Gas Certificate Filings

Take notice that the following filings have been made with the Commission:

1. Florida Gas Transmission Company

Docket No. CP91-636-000

December 14, 1990.

Take notice that on December 11, 1990, Florida Gas Transmission Company (FGT), 1400 Smith Street, Houston, Texas 77002, filed in Docket No. CP91-636-000 a request pursuant to § 157.205 of the Commission's Regulations to construct a sales tap at a point in Polk County, Florida to deliver natural gas to the City of Lakeland (Lakeland), an existing direct sale customer, and to realign the volumes between the existing and the new delivery points under an existing Natural Gas Contract (Direct Sales) for Preferred Interruptable Service dated January 1, 1986 (contract) under FGT's blanket certificate issued in Docket No. CP82-553-000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request on file with the Commission and open to public inspection.

FGT proposes to construct and operate a new meter station and appurtenant facilities as a delivery point (McIntosh point) to deliver natural gas to Lakeland on FGT's St. Petersburg lateral located in Polk County, Florida for use at the McIntosh Plant and to realign volumes between Lakeland's existing Larsen Plant delivery point (Larsen point) and the proposed McIntosh point to accommodate natural gas deliveries to Lakeland for consumption in Lakeland's electric power plants at the Larsen Plant and the McIntosh Plant under the contract. FGT states that it currently delivers natural gas at the Larsen point to Lakeland for use at the Larsen Plant and for deliveries of gas through Lakeland's pipeline to the McIntosh Plant, located approximately two and one-half miles northwest of the Larsen Plant. FGT indicates that Lakeland has requested that FGT construct a new delivery point on the St. Petersburg Lateral in order to relieve an existing capacity constraint on Lakeland's existing pipeline between the Larsen and McIntosh Plants, through which deliveries to the McIntosh Plant are currently made. FGT states that the McIntosh point would enable Lakeland to receive gas directly at the McIntosh Plant via a 16-inch line to be constructed and operated by Lakeland. Further, FGT states that it cannot deliver Lakeland's certificated volumes at Lakeland's existing Larsen point at the elevated pressure required by Lakeland's new generating units at the McIntosh Plant. Further, FGT requests authorization to realign the volumes between the Larsen point and the McIntosh point to enable the McIntosh plant to directly receive a share of Lakeland's currently certificated volumes at the proposed McIntosh point. FGT states that the proposed delivery point and realignment of volumes are not prohibited by it's existing tariff and that it has sufficient capacity to accommodate the proposed service without detriment or disadvantage to other FGT customers.

Comment date: January 28, 1991, in accordance with Standard Paragraph G at the end of this notice.

2. Arkla Energy Resources a division of Arkla, Inc.

Docket No. CP91–632–000

December 14, 1990.

Take notice that on December 10, 1990, Arkla Energy Resources (AER), a division of Arkla, Inc., Post Office Box 21734, Shreveport, Louisiana 71151, filed in Docket No. CP91–632–000 a request pursuant to § 157.205 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205) for authorization to construct and operate two sales taps and to serve three new customers from an existing tap under AER's blanket certificate issued in Docket Nos. CP82–384–000 and CP82–384–001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER requests authorization to construct and operate two sales taps to serve two domestic end users in Kansas and Oklahoma and to serve three new domestic customers from an existing tap in Oklahoma. AER asserts that the gas would be delivered to Arkansas Louisiana Gas Company for resale to the domestic customers. AER states that gas would be used for domestic purposes and estimates total peak day sales to be 10.5 Mcf and total annual sales to be 417 Mcf.

AER states that the gas will be delivered from its general system supply which it asserts is adequate to provide the service.

Comment date: January 28, 1991, in accordance with Standard Paragraph G at the end of this notice.

3. Moraine Pipeline Company

Docket Nos. CP91–684–000, CP91–685–000

December 14, 1990.

Take notice that on December 14, 1990, Moraine Pipeline Company (Moraine), 701 East 22nd Street, Lombard, Illinois 60148, filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of two shippers under its blanket certificate issued in Docket No. CP86–492–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[1]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Moraine and is summarized in the attached appendix.

Comment date: January 28, 1991, in accordance with Standard Paragraph G at the end of this notice.

[1] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91–684–000 (12–14–90)	Hadson Gas Systems, Inc. (Marketer).	100,000 30,000 10,950,000	Illinois	Wisconsin	10–17–88, ITS, Interruptible.	ST91–2842–000 10–1–90.
CP91–685–000 (12–14–90)	TexPar Energy Inc. (Marketer).	50,000 30,000 10,950,000	Illinois	Wisconsoin	10–17–88, ITS, Interruptible.	ST91–2709–000 10–1–90.

4. Southern Natural Gas Company

Docket Nos. CP91–647–000, CP91–648–000, CP91–649–000

December 14, 1990.

Take notice that Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202–2563, (Applicant) filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under its blanket certificate issued in Docket No. CP88–316–000, pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[2]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicant and is summarized in the attached appendix.

Comment date: January 28, 1991, in accordance with Standard Paragraph G at the end of this notice.

[2] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt points [1]	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91–647–000 (12–12–90)	Brooklyn Interstate Natural Gas Corp. (Marketer).	60,000 5,000 1,825,000	LA, TX, OTX, OLA, MS, AL.	AL	9–12–88, IT, Interruptible.	ST91–3024 10–12–90
CP91–648–000 (12–12–90)	Brooklyn Interstate Natural Gas Corp. (Marketer).	30,000 5,000 1,825,000	LA, TX, OTX, OLA, MS, AL.	MS	9–12–88, IT, Interruptible	ST91–3017 10–12–90
CP91–649–000 (12–12–90)	Phillips Petroleum Company (Producer).	50,000 50,000 18,250,000	LA, TX, OTX, OLA, MS, AL.	LA	9–21–88, IT, Interruptible.	ST91–3021 10–12–90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.

5. Colorado Interstate Gas Company

Docket No. CP91-601-000

December 14, 1990.

Take notice that on December 7, 1990, Colorado Interstate Gas Company (CIG), P.O. Box 1987, Colorado Springs, Colorado 80944, filed in Docket No. CP91-601-000 an application pursuant to section 7(b) of the Natural Gas Act for permission and approval to abandon sales service performed by CIG for West Texas Gas, Inc. (West Texas), all as more fully set forth in the application which is on file with the Commission and open to public inspection.

CIG proposes to abandon the sales of natural gas to West Texas under CIG's Rate Schedules SG-1 and EX-1 to be effective on the termination date, September 30, 1990, of the Service Agreement dated November 27, 1985, (agreement) with West Texas. Pursuant to the agreement CIG makes deliveries at 12 locations in Moore and sherman County, Texas. CIG states that these delivery points are considered farm taps and primarily serve the fuel needs for agricultural irrigation pumps with individual maximum daily obligations ranging from 50 Mcf to 500 Mcf per day. CIG states that West Texas' daily and annual volumetric entitlements are 500 Mcf and 65,000 Mcf, respectively. CIG has not provided any sales service to West Texas subsequent to September 30, 1990, the termination date of the agreement, it is stated. CIG indicates that West Texas no losnger desires to purchase gas from CIG since West Texas has secured alternate gas suppliers. Further, CIG transports the gas purchased by West Texas fro these new suppliers using the same 12 delivery locations and that gas service to West Texas' ultimate consumers has not been terminated or interrupted, it is indicated. No facilities are to be abandoned, it is stated.

Comment date: January 4, 1991, in accordance with Standard Paragraph F at the end of this notice.

Colorado Interstate Gas Company Natural Gas Pipeline Company of America

[Docket Nos. CP91-633-000, CP91-634-000, CP91-635-000]

December 14, 1990.

Take notice that the above referenced companies (Applicants filed in respective dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has been provided by the Applicants and is included in the attached appendix.

The Applicants also states that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: January 28, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (dated filed)	Applicant	Shipper name	Peak day,[1] avg. annual	Points of		Start up date, rate schedule	Related dockets
				Receipt	Delivery		
CP91-633-000 12/11/90	Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, CO 80944.	Western Sugar Company.	800 800 292,000	WY, CO, KS	CO	TF-1, firm, 10/1/90.	CP86-589-000, ST91-5335-000
CP91-634-000 12/11/90	Natural Gas Pipeline Co., of America, 701 E 22nd St., Lombard, IL 60148.	Tejas Hydrocarbons Co.	100,000 50,000 18,250,000	Various states	Various states	ITS, Interruptible, 10/5/90	CP86-582-000, ST91-2843-000
CP91-635-000 12/11/90	Natural Gas Pipeline Co., of America 701 E 22nd St., Lombard, IL 60148.	Coastal Gas Marketing Co.	50,000 30,000 10,950,000	Various states	Various states	ITS, Interruptible, 10/5/90	CP86-582-000, ST91-2707-000

[1] Quantities are shown in MMBtu unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation cetificate. If an ST docket is shown, 120-day transportation service was reported in it.

Arkla Energy Resources, a division of Arkla, Inc.

[Docket No. CP91-610-000]

December 14, 1990.

Take notice that on December 7, 1990, Arkla Energy Resources, a division of Arkla, Inc. (AER), 525 Milam Street, Shreveport, Louisiana 71151, filed in Docket No. CP91-610-000 a request pursuant to §§ 157.205, 157.211, and 157.212 of the Commission's Regulations under the Natural Gas Act (18 CFR 157.205, 157.211, and 157.212) to construct and operate certain facilities in Arkansas, Louisiana, and Texas, under the authorization issued in Docket Nos. CP82-384-000 and CP82-384-001 pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open to public inspection.

AER proposes to construct and operate five new sales taps and related facilities and to operate four other existing taps for resale to domestic consumers other than the right-of-way grantors for whom the taps were installed, all for the delivery of gas to

Arkansas Louisiana Gas Company (ALG) for resale to domestic, commercial, and industrial consumers in Arkansas, Louisiana, and Texas. Set forth below for each such tap is its size and location, the name of the customer initially requesting service, the estimated initial annual and peak day usage and the estimated cost of the proposed facilities.

(a) An existing one-inch tap on AER's Line AM–46, Section 29, Township 12 South, Range 29 West, Little River County, Arkansas, for initial service to a new domestic customer, Marvin Buck, using approximately 90 Mcf annually and 2 Mcf on a peak day. AER claims that this customer would manifold onto the existing tap and new construction would not be necessary.

(b) A new one-inch tap on AER's Line FT–5, Section 20, Township 19 North, Range 2 West, Lincoln Parish, Louisiana, for initial service to a domestic customer, Charlie Barmore, using approximately 85 Mcf annually and 1 Mcf on peak day and would be constructed at an estimated cost of $1,900.

(c) An existing one-inch tap on AER's Line HT–1, Section 12, Township 18 North, Range 1 East, Ouachita Parish, Louisiana, for initial service to a new domestic customer, Donald W. Sims, using approximately 170 Mcf annually and 2 Mcf on a peak day. AER claims tha this customer would manifold onto the existing tap and new construction would not be necessary.

(d) An existing one-inch tap on AER's Line FM–42, Section 19, Township 16 North, Range 8 West, Bienville Parish, Louisiana, for initial service to two new domestic customers, Steve Gates and Sherri Todd, using approximately 90 Mcf annually and 1 Mcf on a peak day. AER claims that these customers would manifold onto the existing tap and new construction would not be necessary.

(e) An existing one-inch tap on AER's Line A, Section 7, Township 19 North, Range 1 West, Lafayette County, Arkansas, for initial service to a new domestic and commercial customer, Thomas G. Benton, Jr., using approximately 600 Mcf annually and 7 Mcf on a peak day. AER claims that this customer would manifold onto the existing tap and new construction would not be necessary.

(f) A two-inch tap on AER's Line AM–54, Martin Binnion A–30 Survey, Titus County, Texas, for initial service to a new industrial customer, APB Corporation, using approximately 144,000 Mcf annually and 480 Mcf on a peak day and would be constructed at a cost of $1,569.

(g) A four-inch tap on AER's Line AM–47, Gary B. King Survey, Wood County, Texas, for initial service to domestic, commercial and industrial customers from ALG's new Rural Extension No. 1276,[4] using approximately 100,000 Mcf annually and 500 Mcf on a peak day and would be constructed at an estimated cost of $35,842.

(h) A two-inch tap on AER's Line AM–50, J.W. Duncan A–95 Survey, Morris County, Texas, for initial service to domestic, commercial and industrial customers from ALG's new Rural Extension No. 1278,[5] using approximately 2,975 Mcf annually and 16 Mcf on a peak day and would be constructed at an estimated cost of $8,961.

(i) A two-inch tap on AER's Line H, Section 23, Township 20 North, Range 2 East, Union Parish, Louisiana, for initial service to domestic commercial and industrial customers from AIG's new Rural Extension No. 1280,[6] using approximately 7,446 Mcf annually and 216 Mcf on a peak day and would be constructed at an estimated cost of $31,755.

AER alleges that the gas would be delivered from its general system supply, which it claims is adequate to provide the proposed service. AER states that the gas would be billed at ALG's applicable retail rates as filed and effective with the appropriate state regulatory from time to time. AER has provided in Exhibit P of the application, a copy of ALG's presently effective rate schedules as filed with the Arkansas Public Service Commission, the Louisiana Public Service, and the Texas Railroad Commission.

Comment date: January 28, 1991, in accordance with Standard Paragraph G at the end of this notice.

8. Panhandle Eastern Pipe Line Company

[Docket No. CP91–595–000]

December 14, 1990.

Take notice that on December 6, 1990, Panhandle Eastern Pipe Line Company (Panhandle), P.O. Box 1642, Houston, Texas 77251–1642, filed in Docket No. CP91–595–000 a request pursuant to § 157.205 and 157.212 of the Federal Energy Regulatory Commission's (Commission) Regulations under the Natural Gas Act for authorization to add an additional delivery point and to reassign the maximum daily delivery volumes at certain points of delivery in accordance with a sales service agreement with Indiana Gas Company, Inc. (Indiana Gas), under the blanket certificate issued in Docket No. CP83–83–000 pursuant to Section 7 of the Natural Gas Act, all as more fully set forth in the request which is on file with the Commission and open for public inspection.

Specifically, Panhandle states that it requests authority to add the existing Richmond delivery point and to reassign the maximum daily delivery volumes to Indiana Gas at the Richmond, Crawfordsville, Muncie #1—King, Lebanon and Tipton delivery points all in accordance with a sales service agreement with Indiana Gas dated October 26, 1990 (October 26, 1990 Agreement). Panhandle also notes that its request in the subject docket is in response to Indiana Energy, Inc.'s, Indiana Gas' parent, recent acquisition of the Richmond Gas Company. Further, Panhandle states that the addition of the Richmond delivery point and the reassignment of delivery volumes under the October 26, 1990 Agreement will not increase its sales volumes to Indiana Gas and that the aggregate volumes delivered on a single day at all delivery points will not exceed 240,030 Mcf.

Comment date: January 28, 1991, in accordance with Standard Paragraph G at the end of this notice.

9. Viking Gas Transmission Company Tennessee Gas Pipeline Company

[Docket Nos. CP91–643–000, CP91–644–000, CP91–645–000]

December 17, 1990.

Take notice that on December 11, 1990, the above referenced companies (Applicants) filed in their respective dockets prior notice requests pursuant to § 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under blanket certificates issued pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the prior notice requests which are on file with the Commission and open to public inspection.[7]

Information applicable to each transaction including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day, and annual volumes, and the docket numbers and initiation dates of the 120-day transactions under § 284.223 of the Commission's Regulations has

[4] ALG's Rural Extension No. 1276 would consist of 1,300 Feet of four-inch plastic pipe.

[5] ALG's Rural Extension No. 1278 would consist of 3,192 feet of two-inch plastic pipe.

[6] ALG's Rural Extension No. 1280 would consist of 3,240 feet of four-inch plastic pipe.

[7] These prior notice requests are not consolidated.

been provided by the Applicants and is included in the attached appendix.

The Applicants also state that each would provide the service for each shipper under an executed transportation agreement, and that the Applicants would charge rates and abide by the terms and conditions of the referenced transportation rate schedules.

Comment date: January 31, 1991, in accordance with Standard Paragraph G at the end of this notice.

Docket Number [2]	Applicant	Shipper name	Peak day [1] average annual	Points of		Start up date rate schedule	Related dockets
				Receipt	Delivery		
CP91-643-000	Viking Gas Transmission Company, P.O. Box 2511, Houston, TX 77252.	Dekalb Energy Company.	125,000 125,000 46,625,000	WI, MN, ND	WI, MN, ND	10-1-90, IT-2	CP90-273-000. ST91-2347-000.
CP91-644-000	Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, TX 77252.	Tejas Power Corporation.	10,000 10,000 3,650,000	Off LA	WV	11-1-90, FT-A	CP87-115-000. ST91-5256-000.
CP91-645-000	Tennessee Gas Pipeline Company, P.O. Box 2511, Houston, TX 77252.	PSI Gas Marketing, Inc.	5,000 5,000 1,825,000	Off LA	WV	11-10-90, FT-A	CP87-115-000. ST91-5257-000.

[1] Quantities are shown in dekatherms unless otherwise indicated.
[2] The CP docket corresponds to applicant's blanket transportation certificate. If an ST docket is shown, 120-day transportation service was reported in it.

10. Colorado Interstate Gas Company, Southern Natural Gas Company, Southern Natural Gas Company, United Gas Pipe Line Company, United Gas Pipe Line Company, United Gas Pipe Line Company

Docket Nos. CP91-686-000, CP91-688-000, CP91-689-000, CP91-690-000, CP91-691-000, CP91-692-000, CP91-693-000

December 17, 1990.

Take notice that on December 14, 1990, Applicants filed in the above-referenced dockets prior notice requests pursuant to §§ 157.205 and 284.223 of the Commission's Regulations under the Natural Gas Act for authorization to transport natural gas on behalf of various shippers under the blanket certificates issued to Applicants pursuant to section 7 of the Natural Gas Act, all as more fully set forth in the requests that are on file with the Commission and open to public inspection.[3]

Information applicable to each transaction, including the identity of the shipper, the type of transportation service, the appropriate transportation rate schedule, the peak day, average day and annual volumes, and the initiation service dates and related ST docket numbers of the 120-day transactions under § 284.223 of the Commission's Regulations, has been provided by Applicants and is summarized in the attached Appendix A. Applicants' addresses and transportation blanket certificates are shown in the attached Appendix B.

Comment date: January 31, 1991, in accordance with Standard Paragraph G at the end of this notice.

[3] These prior notice requests are not consolidated.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-686-000 (12-14-90)	Rangeline Corporation (Marketer).	10,000 5,000 [2] 1,825,000	KS, WY, OK	CO	10-5-90, TI-1, Interruptible.	ST91-2917-000, 10-5-90.
CP91-688-000 (12-14-90)	Rangeline Corporation (Marketer).	30,000 30,000 10,950,000	OTX, OLA, TX, LA, MS, AL.	LA	9-20-90, IT, Interruptible.	ST91-2330-000, 10-16-90.
CP91-689-000 (12-14-90)	Access Energy Corporation (Marketer).	1,400 1,400 [3] 511,000	OTX, OLA, TX, LA, MS, AL.	LA	10-17-90, FT, Firm	ST91-3025-000, 10-17-90.
CP91-690-000 (12-14-90)	Transco Energy Marketing Company (Marketer).	103,000 103,000 37,595,000	Various	LA, AL, MS	12-15-87, ITS, Interruptible [4].	ST91-5232-000, 11-16-90.
CP91-691-000 (12-14-90)	Midcon Marketing Corp. (Marketer).	721,000 721,000 263,165,000	Various	Various	4-30-86, ITS, Interruptible [5].	ST91-2971-000, 10-26-90.
CP91-692-000 (12-14-90)	Hadson Gas Systems, Inc. (Marketer).	25,750 25,750 9,398,750	LA	MS, FL	2-17-89, ITS, Interruptible [6].	ST91-5463-000, 9-18-90.

Docket No. (date filed)	Shipper name (type)	Peak day, average day, annual MMBtu	Receipt [1] points	Delivery points	Contract date, rate schedule, service type	Related docket, start up date
CP91-693-000 (12-14-90)	Midcon Marketing Corp. (Marketer).	4,326 4,326 1,578,990	TX	MS	10-1-90, FTS, Firm	ST91-570-000, 10-1-90.

[1] Offshore Louisiana and offshore Texas are shown as OLA and OTX.
[2] CIG's quantities are in Mcf.
[3] Southern's quantities are in Mcf.
[4] As amended on October 18, 1990.
[5] As amended.
[6] As amended on August 23, 1990.

Applicant's address	Blanket docket
Colorado Interstate Gas Company, P.O. Box 1087, Colorado Springs, Colorado 80944.	CP86-589, et al.
Southern Natural Gas Company, P.O. Box 2563, Birmingham, Alabama 35202-2563.	CP88-316-000.
United Gas Pipe Line Company, P.O. Box 1478, Houston, Texas 77251-1478.	CP88-6-000.

Standard Paragraphs

F. Any person desiring to be heard or make any protest with reference to said filing should on or before the comment date file with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, a motion to intervene or a protest in accordance with the requirements of the Commission's Rules of Practice and Procedure (18 CFR 385.211 and 385.214) and the Regulations under the Natural Gas Act (18 CFR 157.10). All protests filed with the Commission will be considered by it in determining the appropriate action to be taken but will not serve to make the protestants parties to the proceeding. Any person wishing to become a party to a proceeding or to participate as a party in any hearing therein must file a motion to intervene in accordance with the Commission's Rules.

Take further notice that, pursuant to the authority contained in and subject to jurisdiction conferred upon the Federal Energy Regulatory Commission by sections 7 and 15 of the Natural Gas Act and the Commission's Rules of Practice and Procedure, a hearing will be held without further notice before the Commission or its designee on this filing if no motion to intervene is filed within the time required herein, if the Commission on its own review of the matter finds that a grant of the certificate is required by the public convenience and necessity. If a motion for leave to intervene is timely filed, or if the Commission on its own motion believes that a formal hearing is required, further notice of such hearing will be duly given.

G. Any person or the Commission's staff may, within 45 days after the issuance of the instant notice by the Commission, file pursuant to Rule 214 of the Commission's Procedural Rules (18 CFR 385.214) a motion to intervene or notice of intervention and purusant to § 157.205 of the Regulations under the Natural Gas Act (18 CFR 157.205) a protest to the request. If no protest is filed within the time allowed therefore, the proposed activity shall be deemed to be authorized effective the day after the time allowed for filing a protest. If a protest is filed and not withdrawn within 30 days after the time allowed for filing a protest, the instant request shall be treated as an application for authorization pursuant to section 7 of the Natural Gas Act.

Lois D. Cashell,

Secretary.

[FR Doc. 90-29965 Filed 12-21-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TQ91-2-31-001]

Arkla Energy Resources; Filing of Revised Tariff Sheets Reflecting Quarterly PGA Adjustment

December 17, 1990.

Take notice that on December 11, 1990, Arkla Energy Resources (AER), a division of Arkla, Inc., tendered for filing the following tariff sheets to become effective January 1, 1991:

Original Volume No. 3
11th Revised Sheet No. 185.1

First Revised Volume No. 1
60th Revised Sheet No. 4

First Revised Volume No. 1
13th Revised Sheet No. 7A

These tariff sheets reflect AER's third quarterly PGA filing made subsequent to its annual PGA effective April 1, 1990 under the Commission's Order Nos. 483 and 483A.

The proposed changes would increase AER's system cost by $124,478 and its revenue from jurisdictional sales and service by $1,285 for the PGA period of January, February, and March 1991 as adjusted.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before December 24, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-29958 Filed 12-21-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. TM91-3-25-001]

Mississippi River Transmission Corp.; Rate Change Filing

December 17, 1990.

Take notice that on December 10, 1990, Mississippi River Transmission Corporation (MRT) tendered for filing the following tariff sheets to its FERC Tariff:

Second Revised Volume No. 1	Proposed effective date
Substitute Fifty-Second Revised Sheet No. 4.	January 1, 1991.
Substitute Eleventh Revised Sheet No. 4.1.	January 1, 1991.
Substitute Eleventh Revised Sheet No. 4.2.	January 1, 1991.
Substitute Tenth Revised Sheet No. 4B.	January 1, 1991.
Original Volume 1-A	
Substitute Sixth Revised Sheet No. 2.	January 1, 1991.
Substitute Sixth Revised Sheet No. 3.	January 1, 1991.

MRT states that on November 30, 1990, it filed to increase the GRI surcharge reflected in its sales and

transportation rates. MRT states that since that time it has determined that its proposed GRI surcharge level differs from the 1.42 cents per MMBtu approved by the Commission's Opinion No. 355. MRT is therefore respectfully requesting that it be permitted to withdraw the GRI surcharge tariff sheets originally submitted on November 30, 1990, and be allowed to replace such withdrawn sheets with the substitute sheets shown above.

The corrected tariff sheets reflect an increase in the Gas Research Institute (GRI) surcharge to 1.42 cents per MMBtu in accordance with the Commission's Opinion No. 355, issued October 1, 1990 at Docket No. RP90–120–000.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before December 24, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–29959 Filed 12–21–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. PR91–7–000]

Mississippi Fuel Co.; Petition for Rate Approval

December 14, 1990.

Take notice that on December 11, 1990, Mississippi Fuel Company filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of 24.5 cents per Mcf for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Mississippi Fuel's petition states that it is an intrastate natural gas pipeline within the meaning of section 2(16) of the Natural Gas Policy Act of 1978. Its system primarily serves market in central and southern Mississippi Fuel's previous maximum interruptible transporation rate of 33.12 cents per Mcf for section 311(a)(2) service was approved by the Commission March 23, 1988 in Docket No. ST88–1213–000.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before January 3, 1991. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–29961 Filed 12–21–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket No. TQ91–3–59–002]

Northern Natural Gas Co., Division of Enron Corp.; Proposed Changes in FERC Gas Tariff

December 17, 1990.

Take notice that Northern Natural Gas Company, Divison of Enron Corp. (Northern), on December 13, 1990, tendered for filing changes in its FERC Gas Tariff, Third Revised Volume No. 1 (Volume No. 1 Tariff) and Original Volume No. 2 (Volume No. 2 Tariff).

Northern is filing the revised tariff sheets to modify its November 30, 1990 PGA Flex filing (Docket No. TF91–3–59–000) to a PGA Out-of-Cycle Quarterly filing in order to effectuate the Base Average Gas Purchase Cost of $2.3707. This is the result of the Commission's Order dated December 7, 1990 rejecting Docket No. TQ91–2–59. The instant filing reflects a Base Average Gas Purchase Cost of $2.3707 which is inclusive of an IGIC Reservation Charge of $.15.

Northern states that copies of the filing were served upon Northern's jurisdictional sales customers and interested state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before December 24, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–29955 Filed 12–21–90; 8:45 am]

BILLING CODE 6717–01–M

[Docket Nos. CP90–772–002, RP89–191–011]

Northwest Pipeline Corp., Proposed Change in FERC Gas Tariff

December 17, 1990.

Take notice that on November 30, 1990, Northwest Pipeline Corporation ("Northwest") tendered for filing and acceptance the following tariff sheets to be a part of its FERC Gas Tariff.

First Revised Volume No. 1–A

First Revised Sheet No. 304
Original Sheet No. 304–A
Original Sheet No. 304–B
First Revised Sheet No. 305
First Revised Sheet No. 317
Original Sheet No. 317–A
Original Sheet No. 317–B
Original Sheet No. 317–C

The purpose of this filing is to add to Northwest's Interruptible Transportation Rate Schedule (TI–1) and to its Firm Transportation Rate Schedule (TF–1) a more explicit facilities reimbursement policy in compliance with the Commission's October 30, 1990 order in the above listed dockets. Northwest requests an effective date of December 31, 1990 for the tendered tariff sheets.

Northwest states that a copy of this filing is being mailed to Northwest's jurisdictional customer list and affected state commissions.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 29426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before December 24, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make

protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-29960 Filed 12-21-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. PR91-8-000]

Olympic Pipeline Co.: Petition for Rate Approval

December 14, 1990.

Take notice that on December 12, 1990, Olympic Pipeline Company filed pursuant to § 284.123(b)(2) of the Commission's regulations, a petition for rate approval requesting that the Commission approve as fair and equitable a maximum rate of $0.176 per MMBtu for transportation of natural gas under section 311(a)(2) of the Natural Gas Policy Act of 1978 (NGPA).

Olympic Pipeline's petition states that it is an intrastate natural gas pipeline within the meaning of section 2(16) of the Natural Gas Policy Act of 1978. Olympic is requesting section 311 rate approval for transportation to be rendered on its West Chalkley System located in Calcasieu and Cameron Parishes, Louisiana.

Pursuant to § 284.123(b)(2)(ii), if the Commission does not act within 150 days of the filing date, the rate will be deemed to be fair and equitable and not in excess of an amount which interstate pipelines would be permitted to charge for similar transportation service. The Commission may, prior to the expiration of the 150 day period, extend the time for action or institute a proceeding to afford parties an opportunity for written comments and for the oral presentation of views, data and arguments.

Any person desiring to participate in this rate proceeding must file a motion to intervene in accordance with §§ 385.211 and 385.214 of the Commission's Rules of Practice and Procedures. All motions must be filed with the Secretary of the Commission on or before January 3, 1991. The petition for rate approval is on file with the Commission and is available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-29962 Filed 12-21-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP89-38-012]

U-T Offshore System; Filing

December 17, 1990.

Take notice that on December 13, 1990, U-T Offshore System (U-TOS) filed a single tariff sheet for inclusion in Second Revised Volume No. 1 of its FERC Gas Tariff. Such tariff sheet is Substitute Second Revised Sheet No. 5 (Superseding Second Revised Sheet No. 5).

On November 14, 1990 U-T Offshore System (U-TOS) made a tariff filing in compliance with an order issued by the Federal Energy Regulatory Commission (Commission) on October 30, 1990 in the above-referenced dockets. The October 30 Order approved an uncontested settlement that provided for, among other things, an experimental program of firm transportation capacity brokering on the U-TOS system, and specified the terms and conditions applicable to the brokering program.

One of the tariff sheets filed by U-TOS—Second Revised Sheet No. 5—contained the settlement rates, including the rates for brokered capacity. U-TOS included in such rates the applicable Annual Charge Adjustment (ACA) surcharge of 0.22¢ per Mcf. U-TOS states that the Commission Staff has requested that U-TOS not include the ACA surcharge in the stated rates. Accordingly, U-TOS states that it is filing Substitute Second Revised Sheet No. 5 (Superseding Second Revised Sheet No. 5) which does not include the ACA surcharge in the stated rates. However, footnotes on such page state that the surcharge will be applicable to transportation of gas by U-TOS.

U-TOS is requesting an effective date on the attached tariff sheet of December 1, 1990 because this is the effective date requested by U-TOS for Second Revised Sheet No. 5. U-TOS states that the attached sheet merely changes the format of Second Revised Sheet No. 5; it does not change the total rate—including ACA surcharge—to be charged to the shippers on U-TOS.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NW., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990)). All such protests should be filed on or before December 24, 1990. Protests will be considered by the Commission in determining the appropriate action to be taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90-29957 Filed 12-21-90; 8:45 am]

BILLING CODE 6717-01-M

[Docket No. RP90-187-001]

Valero Interstate Transmission Co.; Proposed Changes in FERC Gas Tariff

December 17, 1990.

Take notice that Valero Interstate Transmission Company ("Vitco"), on December 13, 1990 tendered for filing revised tariff sheets and certain Exhibits in compliance with the Commission letter order dated November 14, 1990 in Docket No. RP90-187-000.

Tariff Sheets: FERC Gas Tariff, Original Volume No. 2
- 28th Revised Sheet No. 6
- 1st Revised Sheet Nos. 84-94
- 5th Revised Sheet No. 95
- 2nd Revised Sheet No. 95.1
- 1st Revised Sheet Nos. 96-106.4

Revised Exhibit (D)
- Supporting data in the format required in FERC Form No. 542-PGA for Purchased Gas Cost and Account 191

Revised Exhibit (E)
- Revised "Provisions for Accrual and Amortization of Take-or-Pay Costs" and supporting schedules for the calculation of the "Take-or-Pay Commodity Rate Surcharge"

Revised Exhibit (F)
- Revised "Settlement Provisions For Accrual and Amortization of Balance in Account 191 as of the Effective Date in Docket No. RP90-187"

The revised tariff sheets and exhibits listed above incorporate all the changes required by the November 14, 1990 Commission letter order. Vitco requests that the above tariff sheets and exhibits be accepted for filing as being in compliance with the Commission letter order dated November 14, 1990. Vitco requests that the tariff sheets listed above be made effective November 15, 1990 and that waiver be granted of any Commission regulation which would prohibit such filing or effectiveness.

Any person desiring to protest said filing should file a protest with the Federal Energy Regulatory Commission, 825 North Capitol Street, NE., Washington, DC 20426, in accordance with Rules 214 and 211 of the Commission's Rules of Practice and Procedure (18 CFR 385.214, 385.211 (1990). All such protests should be filed on or before December 24, 1990. Protests will be considered by the Commission in determining the appropriate action to be

taken, but will not serve to make protestants parties to the proceeding. Persons that are already parties to this proceeding need not file a motion to intervene in this matter. Copies of this filing are on file with the Commission and are available for public inspection.

Lois D. Cashell,

Secretary.

[FR Doc. 90–29956 Filed 12–21–90; 8:45 am]

BILLING CODE 6717–01–M

Office of Hearings and Appeals

Issuance of Decisions and Orders by the Office of Hearings and Appeals During the Week of October 1 Through October 5, 1990

During the week of October 1 through October 5, 1990, the decisions and orders summarized below were issued with respect to appeals and applications for other relief filed with the Office of Hearings and Appeals of the Department of Energy. The following summary also contains a list of submissions that were dismissed by the Office of Hearings and Appeals.

Appeal

San Antonio Light, 10/3/90, HFA–0301

The San Antonio Light (Light) filed an Appeal from a determination issued by the Director, Executive Secretariat of the Department of Energy. The determination denied a Request for Information which the Light had filed with the DOE under the Freedom of Information Act (FOIA). The Light, in its Request, asked for copies of all reports and correspondence relating to an explosion that occurred at Medina Air Force Base, San Antonio, Texas, on November 13, 1963. In considering the Appeal, the DOE determined that due to changes in classification policy, certain portions of the withheld material could now be released to the Light. The DOE also determined that the remaining withheld information had properly been classified under Executive Order 12356 or the Atomic Energy Act of 1954 and that Exemptions 1 and 3 protected these documents from being released pursuant to the FOIA.

Refund Applications

Allied Paving Company, 10/5/90, RF272–42610, RD272–42610

Allied Paving Company, a road construction firm, filed an Application for Refund as an end-user of refined petroleum products in the subpart V crude oil refund proceeding. A group of state governments and two territories of the United States (the States) objected to the application, and provided econometric evidence concerning the construction industry as a whole. The DOE determined that the States had failed to produce any convincing evidence to show that Allied had been able to pass on the curde oil overcharges to its customers, and found that the States' econometric evidence failed to properly address the individual situation of the applicant. As in previous Decisions, the DOE rejected that States' contention that industry-wide data constituted sufficient evidence to rebut the presumption that end-users such as Allied were injured by crude oil overcharges. However, the DOE concurred with the States' assertion that Allied had passed through some of its alleged overcharges through the use of price escalator clauses. The DOE therefore reduced Allied's total purchase volume by 11 percent, the approximate percentage of its 1973 through 1981 purchases that were affected by the clauses. The DOE granted Allied a refund of $43,043, based on its approved purchases of 53,804,125 gallons of petroleum products.

Atlantic Richfield Company/Major Oils, 10/2/90, RF304–3436

The DOE issued a Decision and Order on October 2, 1990 to Major Oils in the Atlantic Richfield Company (ARCO) special refund proceeding. Major Oils first claimed to be a direct purchaser of ARCO products and later claimed to be an indirect purchaser. However, the firm could produce no evidence to show that it had ever purchased—either directly or indirectly—any ARCO products. Accordingly, the Application was denied.

Elias Oil Company/Giambrone Oil Co., Inc. PRI MAR Petroleum, Inc., N.L. Campbell & Sons, Inc. Amelia Oil Company, 10/5/90, RF319–1, RF319–3, RF319–5, RF319–6

The Office of Hearings and Appeals (OHA) granted four Applications for Refund submitted on behalf of purchasers of CITCO diesel fuel in the Elias Oil Company special refund proceeding. The Applications were approved under the presumption that all purchasers of CITCO diesel fuel during the settlement period were injured to the extent that they did not receive CITCO diesel fuel that they were entitled to receive. The total volume considered in this Decision and Order was 1,431,902 gallons of diesel fuel and the total sum of the refunds granted was $1,449.

Elk Corporation of America, 10/5/90, RF272–54958, RD272–54958

The DOE issued a Decision and Order concerning an Application for Refund filed on behalf of the Elk Corporation of America in the crude oil Subpart V special refund proceeding. The DOE determined that the refund claim was meritorious and granted a refund of $156,129. The DOE also denied a Motion for Discovery filed by a consortium of States and two territories and rejected their challenge to the claim. The DOE denied the States' Objections, finding that the industry-wide econometric data submitted by the States did not rebut the presumption that the Applicant was injured by crude oil overcharges.

Gulf States Utilities Company, 10/3/90, RF272–50103

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Gulf States Utilities Company (Gulf States), an electric utility company servicing portions of Texas and Louisiana, based on its purchase of refined petroleum products during the period August 19, 1973 through January 27, 1981. A group of States and Territories (the States) objected to the utility's application on the grounds that Gulf States had passed through increased fuel costs to customers. The States argued that this evidence was sufficient to rebut the presumption of injury for end-users and that DOE should therefore deny the application. The DOE rejected that argument and granted the application, noting that since Gulf States would be required to pass through the refund to injured customers, no additional showing of injury by Gulf States was required. The utility would thus make restitution directly to the parties who bore the overcharges. The refund granted in this Decision was $1,115,407.

Pennsylvania Electric Company, 10/4/90, RF272–27785

The DOE issued a Decision and Order granting a refund from crude oil overcharge funds to Pennsylvania Electric Company (Pennsylvania Electric), an electric utility, based on its purchase of refined petroleum products during the period August 19, 1973 through January 27, 1981. A group of States and Territories (the States) objected to the utility's application on the grounds that Pennsylvania Electric had passed through increased fuel costs to customers. The States argued that this evidence was sufficient to rebut the presumption of injury for end-users and that DOE should therefore deny the application. The DOE rejected that argument and granted the application, noting that since Pennsylvania Electric would be required to pass through the refund to injured customers, no additional showing of injury by Pennsylvania Electric was required. The utility would thus make restitution directly to the parties who bore the

overcharges. The refund granted in this Decision was $82,495.

Texaco, Inc./Freeway Texaco, 10/5/90, RF321–4706, RF321–5518

The DOE issued a Decision and Order regarding two Applications for Refund based upon purchases made by Freeway Texaco (Freeway). The application in Case No. RF321–4706 was signed by "Richard Raines," who claimed that he was Freeway's owner from January 1973 through December 1979. The application in Case No. RF321–5518 was signed by "Richard Raine," who claimed that he was Freeway's owner from March 1973 through July 1976. After conducting an investigation, the DOE determined that the application signed by "Richard Raines" was in fact signed by Robert Williams, who had purchased Freeway from Richard Raine in August 1976. The DOE therefore denied the application in Case No. RF321–4706 and referred the matter of Mr. Williams' fraudulent filing of a refund application to the DOE Inspector General for further investigation. The DOE also granted the refund claim filed by Richard Raine and approved a refund of $2,200 based upon Freeway's purchases of 1,692,218 gallons of motor gasoline from March 1973 through July 1976.

Texaco, Inc./Steven B. Fanta, 10/2/90, RF321–1511

The DOE issued a Decision and Order concerning an Application for Refund filed in the Texaco Inc. special refund proceeding by Steven B. Fanta. Mr. Fanta, a motorist, was unable to substantiate his claim that he purchased 15,000 gallons of Texaco motor gasoline throughout the consent order period. Accordingly, the DOE determined that Mr. Fanta's refund application should be denied.

Refund Applications

The Office of Hearings and Appeals issued the following Decisions and Orders concerning refund applications, which are not summarized. Copies of the full texts of the Decisions and Orders are available in the Public Reference Room of the Office of Hearings and Appeals.

Case Name	Case No.	Date
Al's Hess Station *et al.*	RF272–41646	10/3/90
Atlantic Richfield Co./C&M Oil Co. *et al.*	RF304–3905	10/1/90
Atlantic Richfield Co./F.C.Haab Co. Inc. *et al.*	RF304–10401	10/1/90
Atlantic Richfield Co./Georgia Pacific Corp. Co. *et al.*	RF304–2255	10/1/90
Atlantic Richfield Co./Lewistown Heet Gas Co. *et al.*	RF304–4441	10/3/90
Atlantic Richfield Co./O'Clan Oil Co	RF304–12029	10/3/90
Atlantic Richfield Co./Silva's Richfield *et al.*	RF304–9419	10/4/90
Dodge County Highway Dept	RF272–31	10/4/90
Exxon Corp./Beacon Carter Service *et al.*	RF307–5970	10/4/90
Exxon Corp./BLM Inc. *et al.*	RF307–4872	10/5/90
Exxon Corp./Skyline Exxon *et al.*	RF307–8213	10/1/90
Exxon Corp./Widenhouse Service, Inc. *et al.*	RF307–5972	10/4/90
Gulf Oil Corp./Bilger & Sons, Inc., Selinsgrove Fuel Corp., Beavertown Oil Supply, Inc.	RF300–11605, RF300–11606, RF300–11607	10/3/90
Gulf Oil Corp./Karl's Gulf, Vick's Gulf, Van's Gulf Service Center	RF300–221, RF300–287, RF300–299	10/5/90
Gulf Oil Corp./Keller Oil Co., Inc.	RF300–11200	10/3/90
Jesse Toney and Associates	RF272–48056	10/1/90
Maurice T. Lawthrone	RF272–79542	10/2/90
Merchant's Company, Inc. *et al.*	RF272–70089	10/3/90
Shell Oil Co./Bogart Shell Service *et al.*	RF315–6011	10/5/90
Texaco Inc./B&L Auto Parts, Inc. *et al.*	RF321–3605	10/1/90
Texaco Inc./Fletcher Oil Co., Inc.	RF321–4652	10/2/90
Texaco Inc./Frank's Texaco	RF321–9677, RF321–9678	10/1/90
Texaco Inc./Miles Texaco Service	RF321–711, RF321–9348	10/5/90
Texaco Inc./R.M. Parks	RF321–9895, RF321–9896, RF321–9897, RF321–9898, RF321–9899	10/2/90
Texaco Inc./Wilfred Robinson Estate, Robinson Texaco	RF321–1771, 321–6361	10/2/90
Valley Queen Cheese Factory, Inc. *et al.*	RF272–65032	10/2/90

Dismissals

The following submissions were dismissed:

Name	Case No.
Alex Donovan	RF307–7060
Arizona Central Bus Lines	RF272–70292
Beard Oil Company	RF307–9759
C.E. Mills Construction Co., Inc.	RD272–17844
Childer's & Temple Merchantile Co.	RF307–2011
Crow's Texaco	RD321–4639
Farris Truck Stop	RF272–70372
Faulkand Exxon	RF307–4862
General Rent-A-Car, Inc.	RF272–70362
Georgia Pacific Corporation	RF304–2948
	RF304–3373
H&B Fuel Co., Inc.	RF307–8380
Hal's Arco	RF304–11132
Hardee's Trading Post	RF307–7097
Harry Stamos Texaco	RF321–4901
J.J. Truck Line	RF272–70329
LMT, Inc.	RF272–70291
Memphis Delivery Service, Inc.	RF272–70333
Mike's Shell	RF315–3387
Miller Truck Lines	RF272–70335
Ordie's Texaco	RF321–5993
Pearl River County	RF272–80162
Sherwood Hall Arco	RF304–3525
Silva's Richfield	RF304–9399
Soap Tunnel Car Wash	RF304–11168
Toby Trucking	RF272–70277
Tom's ARCO Service	RF304–4148
Triad Chemical	RF321–7903
Wormley's ARCO Service	RF304–3557

Copies of the full text of these decisions and orders are available in the Public Reference Room of the Office of Hearings and Appeals, Room 1E–234, Forrestal Building, 1000 Independence Avenue SW., Washington, DC 20585, Monday through Friday, between the hours of 1 p.m. and 5 p.m., except federal holidays. They are also available in *Energy Management: Federal Energy Guidelines*, a commercially published loose leaf reporter system.

Dated: December 18, 1990.

George B. Breznay,

Director, Office of Hearings and Appeals.

[FR Doc. 90–30073 Filed 12–21–90; 8:45 am]

BILLING CODE 6450–01–M

Announcement of Dates, Locations, and Times for Public Scoping Meetings on the Programmatic Environmental Impact Statement (PEIS) for the Department of Energy's Proposed Integrated Environmental Restoration and Waste Management Program; Correction

In the Federal Register of December 11, 1990, please make the following corrections.

1. On page 50871, in the second column, information concerning the meeting at Princeton, NJ, should read as follows:

- *Meeting: Princeton, NJ.*
- *Date:* Thursday, January 10, 1991.
- *Time:* 9:00 a.m.–9:30 p.m.
- *Location:* Ramada Inn at Princeton, 4355 Route #1, Princeton, NJ 08540 (609) 452–2400.
- *Contact for the Meeting Above:* Nelson Lingle, U.S. Department of Energy, Oak Ridge Operations Office, 200 Administration Road, Mail Stop EW–91, Oak Ridge, TN 37831–8541 (615) 576–0727.
- *Public Reading Room for the Meeting Above:* Trenton—Mercer County Library, Lawrenceville Branch, Lawrenceville, NJ. Hours: 9:30 a.m.–9 p.m. Mon.–Thurs.; 9:30 a.m.–4:30 p.m., Fri., 10 a.m.–3 p.m., Sat.

The remaining information in column two and the information in column three down to the line that reads "Meeting: Cincinnati, OH" is in error and should be ignored.

2. On page 50872, in the third column, the fifth line from the top of the page should read as follows:

Meeting: Washington, DC.

William E. Wisenbaker,

Acting Director, Program Support Division, Office Environmental Restoration.

[FR Doc. 90–30071 Filed 12–21–90; 8:45 am]

BILLING CODE 6450–01–M

ENVIRONMENTAL PROTECTION AGENCY

[FRL–3872–8]

Intent To Form an Advisory Committee to Negotiate Recycling of Lead Acid Batteries and Announcement of Organizational Meeting

SUMMARY: EPA is considering establishing an Advisory Committee under the Federal Advisory Committee Act (FACA). The Committee's purpose would be to negotiate issues leading to regulating the recycling of lead acid batteries under section 6 of the Toxic Substances Control Act. The Committee would consist of representatives of parties that are substantially affected by the outcome of the proposed rule.

EPA requests public comment on whether:

- It should establish a Federal Advisory Committee;
- It has properly identified interests it believes are affected by the key issues listed above; and
- Regulatory negotiation is appropriate for this rulemaking, and the extent to which the issues, and procedures are adequate and appropriate.

This notice also announces that the Agency will conduct an organizational meeting which will be held in Washington, DC on January 8, 1991 from 10 a.m. to 4 p.m. in the 5th Floor Conference Room at the Conservation Foundation to discuss the issues involved in the regulation of batteries, and whether the Committee should be formed and negotiations proceed. This meeting is open and any parties interested in the negotiation are encouraged to attend. The Conservation Foundation is located at 1250 24th Street., NW., Washington, DC 20037, telephone (202) 293–4800.

EPA began conducting convening activities in November 1990 to identify parties that will be significantly affected by the proposed rule and to identify the issues of concern of such parties.

DATE: In light of the expedited regulatory development schedule, EPA must receive comments and suggestions by January 22, 1991.

ADDRESSES: Comments should be submitted (in duplicate, if possible) to the TSCA Public Docket Office (TS–793) Room NE–G004, Environmental Protection Agency, Attention Docket #61017, 401 M Street, SW Washington, DC 20460.

Docket #61017, containing materials relevant to this rulemaking may be inspected at EPA between 8 a.m. to 12 noon and from 1 p.m. to 4 p.m. on weekdays, except legal holidays.

FOR FURTHER INFORMATION CONTACT: For information pertaining to the establishment of the negotiation committee and associated administrative matters, contact Deborah Dalton, Deputy Director, Regulatory Negotiation Project, Regulatory Management Division, U.S. EPA (PM–223Y), 401 M Street SW., Washington, DC 20460, telephone (202) 382–5495.

For information pertaining to the regulations of lead acid batteries and the regulatory issues to be addressed in the negotiation, contact Nancy Laurson, TS–794, U.S. EPA (TS–794), 401 M Street SW., Washington, DC 20460, telephone (202) 382–7363.

SUPPLEMENTARY INFORMATION:

Outline of Notice

I. EPA's Regulatory Negotiation Project

EPA established the Regulatory Negotiation Project in 1983 to explore and demonstrate the value of negotiation and other consensus-building techniques for developing better regulations which could be implemented in a less adversarial setting.

Negotiations are conducted through Advisory Committees chartered under the Federal Advisory Committee Act (FACA). The goal of the Committee is to reach consensus on the language or issues involved in a rule. If consensus is reached, it is used as the basis of the Agency's proposal. All procedural requirements of the Administrative Procedure Act and other applicable statutes continue to apply.

EPA has developed criteria for evaluation of potential items for negotiation. To qualify under EPA's selection criteria, an item must:

- Be planned for proposal;
- Have a relatively small number of identifiable parties, in an appropriate balance and mix, who have a good faith interest in negotiating;
- Present a limited number of related issues for which sufficient information is available for resolution; and
- Have a time factor that lends some urgency to reaching consensus.

The eight negotiations conducted to date have aided the Agency in better defining the issues and in crafting better approaches. The eight regulatory negotiations were:

- Nonconformance Penalties under the Clean Air Act, as amended; Final rule: August 30, 1985.
- Emergency Pesticide Exemptions under the Federal Insecticide, Fungicide

and Rodenticide Act (FIFRA); final rule: January 15, 1986.

• Farmworker Protection Standards for Agricultural Pesticides under the Federal Insecticide, Fungicide and Rodenticide Act (FIFRA); Proposed rule: July 8, 1988.

• Asbestos Containing Materials in Schools under the Asbestos Hazard Emergency Responsibility Act of 1986 (AHERA); Final rule: October 30, 1987.

• New Source Performance Standards for Woodburning Stoves under the Clean Air Act; Final rule: February 26, 1988.

• Underground Injection of Hazardous Waste under the Hazardous and Solid Waste Amendments of 1984. Final rule: July 26, 1988.

• Minor Permit Modifications under the Resource Conservation and Recovery Act (RCRA); Final rule: September 28, 1988.

• Fugitive Emissions from Equipment Leaks under the Clean Air Act (CAA); Committee agreement: December 1990.

In December 1986, the Program Evaluation Division of EPA's Office of Policy Planning and Evaluation completed an assessment of the regulatory negotiations program. The study confirmed that negotiation is especially appropriate in situations which involve the resolution of a limited number of related issues, none of which involve fundamental questions of value or extremely controversial national policy. The study further concluded that:

• Negotiated rulemaking can produce rules that are more pragmatic with better environmental results while still meeting statutory requirements.

• Negotiated rules are also more likely to be acceptable to the affected industries, the public interest sector, and State and local governments involved in developing them.

• Negotiation may also result in earlier implementation of a rule by reducing the time it takes to proceed from proposed to final rulemaking.

EPA believes that the benefits to all parties of regulatory negotiation are substantial, and is committed to continued use of regulatory negotiation and other consensus-based processes for rulemaking when appropriate.

On November 29, 1990, the President signed the Negotiated Rulemaking Act of 1990 which has as its purpose "to establish a framework for the conduct of negotiated rulemaking" and "to encourage agencies to use the process when it enhances the informal rulemaking process."

II. Lead Acid Battery Recycling

A. Need for Rule

Lead is a ubiquitous and toxic heavy metal used in a wide variety of consumer and industrial products, including lead acid batteries. The pathways of lead exposure are numerous and can take place throughout the life-cycle of a product from mining to deposit. Exposure to lead can result in a number of significant human health effects. High blood lead levels in children are associated with anemia, mental retardation, encephalopathy, and even death at very high levels. Even at low doses, where impacts are more subtle, lead exposures produce a variety of effects including slight increases in blood pressure in adults and subtle deficits in attention span, hearing, and learning disabilities. Lead exposure is also associated with reproductive effects in men and women, and with decreased birth weight and decreased level of development at birth.

The biggest percentage of lead consumed domestically is used in lead acid batteries. Lead acid batteries are also the major source of lead entering the municipal waste stream.

EPA believes that lead acid battery recycling is necessary to reduce the amount of lead entering the environment. Currently, the battery recycling rate is high-approximately 80–90 percent of lead acid batteries are recycled. However, the recycling rate has fluctuated considerably in the past. A significant decline in the recycling rate may result in the indefinite storage of batteries in garages, improper disposal (landfills or along roadsides), or export of lead acid batteries to foreign smelters for recycling. If batteries are recycled offshore, there is a likelihood that battery manufacturing may also move offshore.

EPA's goal is to ensure a continued high recycling rate and attain as close to a 100 percent recycling rate as possible. Lead acid battery recycling will decrease the need to mine and smelt virgin lead and minimize the release of lead into the environment.

B. Selection as a Negotiation Item

EPA believes that the battery recycling regulations may be appropriate for development through the regulatory negotiation process. EPA has made a preliminary inquiry of potential parties and representatives of identified interests to determine if this topic satisfies EPA's selection criteria for negotiated rulemaking. On the basis of this preliminary inquiry, EPA believes that this topic meets its selection criteria and that negotiations can be successful. Affected interests are manageable in number, and EPA's initial contacts indicate that an appropriate balance and mix of groups will be willing to participate in good faith. EPA's lead program office has identified a number of basic issues for which sufficient information is in hand (or will be developed during the negotiations) for resolution.

EPA anticipates the key negotiation questions will focus on how to establish a regulatory approach that will:

1. Achieve a steady, high battery recycling rate.

2. Provide ease of compliance and enforceability.

3. Exhibit maximum regulatory consistency (e.g., with state requirements).

4. Provide incentives for recycling.

5. Minimize the burden on consumers.

6. Minimize administrative burdens.

EPA expects to address the following specific questions:

1. What is the most efficient and effective method to mandate battery recycling (e.g., mandatory take-back, mandatory recycled lead content in batteries, and/or economic incentives)?

2. How can the recycling rate be sustained if the price of virgin lead drops?

3. What economic incentives could be employed to encourage battery recycling (marketable permits, fees)?

4. What party should bear the responsibility (or cost) of recovering spent batteries (retailers, battery manufacturers)?

5. Will any battery recycling methods adversely affect the competitiveness of the domestic primary or secondary lead industry? How will the regulations be applied to imported batteries? Will any battery recycling methods drive battery production or recycling offshore?

D. Potential Interests and Participants

EPA has tentatively identified the following list of possible interests and parties:

—Battery Manufacturers
—Battery Retailers
—Primary and Secondary Lead Smelters
—Environmental Groups
—State Governments
—Mining Companies
—Battery Recycling Organizations
—Consumer Groups
—Importers
—Other Federal Agencies

III. Formation of the Negotiating Committee

A. Procedure for Establishing an Advisory Committee

As a general rule, an agency of the Federal government is required to comply with the requirements of FACA when it establishes or uses a group which includes non-federal members as a source of advice. Under FACA, an Advisory Committee is established only after both consultation with GSA and receipt of a charter. EPA has prepared a charter and has initiated the requisite consultation process. Only upon the successful completion of this process and the receipt of the approved charter will EPA form the Committee and commence negotiations.

B. Participants

The number of participants in the group is estimated to be about 15 and should not exceed 25 participants. A number larger than this could make it difficult to conduct effective negotiations. One purpose of this notice is help determine whether the standard that EPA is developing would substantially affect interests not adequately represented by the proposed participants. We do not believe that each potentially affected organization or individual must necessarily have its own representative. However, we firmly believe that each interest must be adequately represented. Moreover, we must be satisfied that the group as a whole reflects a proper balance and mix of interests.

C. Requests for Representation

If, in response to this Notice, an additional individual or representative of an interest requests membership or representation in the negotiating group, the Agency, in consultation with the facilitator, will determine whether that individual or representative should be added to the group. EPA will make that decision based on whether the individual or interest:

- Would be substantially affected by the rule; and
- Is already adequately represented in the negotiating group.

D. Final Notice

After evaluating the results of the organizational meeting, and reviewing any comments on this Notice and requests for representation, EPA will issue a final notice. That notice will announce the establishment of a Federal Advisory Committee and the date of the first meeting, unless (1) EPA decides, based on comments or other relevant considerations, that such action is inappropriate, or (2) in the event EPA's charter request is disapproved. The negotiation process will begin once the Committee is appropriately chartered and notice is published in the **Federal Register.**

E. Tentative Schedule

EPA will hold an organizational meeting on January 8, 1991. This meeting is open and potential participants are encouraged to attend.

The purpose of this meeting is to (1) discuss whether negotiations should proceed, and if so, discuss how the negotiations should proceed and how the committee should function, (2) consider what issues and topics should not be covered, (3) identify participants on working groups, (4) answer questions, and (5) address any other procedural issues which may arise such as future meeting dates.

If an adequate mix and balance of parties attending the meeting is interested in participating in a negotiation and the charter is approved, EPA would hold the first meeting of the Advisory Committee within approximately one month of the organizational meeting. At this meeting, participants would complete action on any procedural matters outstanding from the organizational meeting, determine how best to address the principal issues, and begin to address them.

Subsequent meetings of the Agency would be held twice a month either in Washington, DC or as determined by the Committee

This negotiation is part of EPA's integrated lead strategy. Due to other EPA activities which are connected to this lead acid battery negotiation, EPA has set a final deadline for completion of the negotiation by April 1991. The Agency intends to terminate the activities of the Committee if it does not appear likely to reach consensus on a schedule that is consistent with Agency rulemaking needs.

IV. Negotiation Procedures.

The following procedures and guidelines will apply to the Committee, if formed, unless they are modified as a result of comments received on this Notice or during the negotiating process.

A. Facilitator

EPA will use a neutral facilitator. The facilitator will not be involved with the substantive development or enforcement of the regulation. The facilitator's role is to:

- Chair negotiating sessions;
- Help the negotiation process run smoothly; and
- Help participants define and reach consensus.

B. Good Faith Negotiation

Since participants must be willing to negotiate in good faith and be authorized to do so, each organization must designate a senior official to represent its interests. This applies to EPA as well, and Paul Campanella, Chief, Commercial Chemical Branch, Office of Toxic Substances will be EPA's representative.

C. Administrative Support and Meetings

EPA's Regulatory Management Division will supply logistical, administrative, and management support. Meetings will be held in the Washington area at the convenience of the Committee.

D. Committee Procedures

Under the general guidance and direction of the facilitator, and subject to any applicable legal requirements, the members will establish the detailed procedures for Committee meeting which they consider most appropriate.

E. Defining Consensus

The goal of the negotiating process is consensus. In the negotiations completed to date, consensus has meant that each interest concurs in the result. We expect the participants to fashion their own working definition of this term.

F. Failure of Advisory Committee to Reach Consensus

In the event the Committee is unable to reach consensus, EPA will proceed to develop its own approach. Parties to the negotiation may withdraw at any time. If this happens, the remaining Committee members and the Agency will evaluate whether the Committee should continue.

G. Record of Meetings

In accordance with FACA's requirements, EPA will keep a record of all Advisory Committee meetings. This record will be placed in the public docket for this rulemaking. EPA will announce Committee meetings in the **Federal Register.** Such meetings will be open to the public.

Dated: December 19, 1990.

Thomas E. Kelly,

Director, Office of Regulatory Management and Evaluation, Office of Policy, Planning, and Evaluation.

[FR Doc. 90-30166 Filed 12-20-90; 8:45 am]

BILLING CODE 6560-50-M

[FRL 3872-7]

Tennessee Chemical Company Site Agreement and Covenant Not to Sue

AGENCY: U.S. Environmental Protection Agency.

ACTION: Agreement and Covenant Not to Sue.

SUMMARY: The U.S. Environmental Protection Agency ("EPA") has reached an agreement with Boliden Intertrade A.G. ("Boliden"), a Swedish company, regarding cleanup and liability for past contamination at Tennessee Chemical Company in Copperhill, Tennessee. Under this agreement, Boliden will purchase the bankrupt Tennessee Chemical Company facility, will spend approximately $8 million over the next ten years on an environmental improvement program, and will reimburse EPA for $180,000 for past site response activities. Among the environmental improvements to be implemented by Boliden are reforestation of purchased lands, installation of sedimentation traps, continued operation of the two wastewater treatment plants protecting the Ocoee River from contaminated water runoff, installation of a new sulfur burner at the Plant facility and remediation of contaminated soil. Boliden, under the agreement, will not be held liable pursuant to CERCLA and RCRA for contamination at the Copperhill site which occurred before Boliden assumed operation of the facility on March 20, 1990, but Boliden will be held liable for any contamination resulting from their operation of the facility. Legal inquires regarding this Agreement should be addressed to Ms. Marcia Owens, Office of Regional Counsel at (404) 347-2641. Copies of the Agreement and Covenant Not to Sue are available from: Ms. Carolyn McCall, Investigation Support Assistant, U.S. EPA, Region IV, Cost Recovery Section, Waste Programs Branch, 345 Courtland St., NE., Atlanta, Georgia 30365, (404) 347-5059.

Dated: December 4, 1990.

Donald J. Guinyard,

Acting Director, Waste Management Division.

[FR Doc. 90-30061 Filed 12-21-90; 8:45 am]

BILLING CODE 6560-50-M

FEDERAL COMMUNICATIONS COMMISSION

Public Information Collection Requirement Submitted to Office of Management and Budget for Review

The Federal Communications Commission has submitted the following information collection requirement to the Office of Management and Budget for review and clearance under the Paperwork Reduction Act, as amended (44 U.S.C. 3501-3520).

Copies of the submission may be purchased from the Commission's copy contractor, International Transcription Service, (202) 857-3800, 2100 M Street NW., suite 140, Washington, DC 20037. Persons wishing to comment on this information collection should contact Jonas Neihardt, Office of Management and Budget, room 3235 NEOB, Washington, DC 20503, (202) 395-3785. Copies of these comments should also be sent to the Commission. For further information contract Judy Boley, Federal Communications Commission, (202) 632-7513.

OMB Number: None.

Title: Section 74.985, Signal booster stations.

Form Number: None.

Action: New collection.

Respondents: Business (including small businesses) and non-profit institutions.

Frequency of Response: On occasion.

Estimated Annual Burden: 500 responses; 250 hours total annual burden; 0.5 hours average burden per response.

Needs and Uses: Section 74.985 requires signal booster stations to obtain written consent from the licensee of an ITFS station whose signals are to be retransmitted. The consent is attached to the application for the signal booster station. Data would then be used to ensure that booster station has consent to retransmit ITFS station signal.

Federal Communications Commission.

William F. Caton,

Acting Secretary.

[FR Doc. 90-29942 Filed 12-21-90; 8:45 am]

BILLING CODE 6712-01-M

[CC Docket No. 87-120]

Common Carrier Public Mobile Services Information; Amended Procedures for Filing Applications for Frequencies in the 470-512 MHz Bands

On October 24, 1990, the Commission released a Public Notice (DA 90-1500), which was amended by Public Notice (Mimeo 10352, released October 26, 1990). These public notices outlined the procedures for filing applications for reassigned multiple address control frequencies in the 470-512 MHz bands.

In order that the Commission be able to readily identify these applications and their associated cities and channels, three significant modifications have been made to the previously announced procedures. These modifications are as follows:

1. Fee Code: The fee code is changed to CUU. The fee, however will remain the same ($230.00 per transmitter).

2. Call Sign: In the area reserved for the call sign on the fee form, enter the city code, a dash, and the channel code. The appropriate codes are shown below.

The codes for the cities (excluding New York City/Northeastern New Jersey for which a subsequent filing period will be established) are:

Boston	101
Chicago	102
Cleveland	103
Dallas/Fort Worth	104
Detroit	105
Houston	106
Los Angeles	107
Miami	108
Philadelphia	109
Pittsburgh	110
San Francisco	111
Washington, DC	112

The Channel Code will be the appropriate UHF-TV channel designation for the group of frequencies for which the applicant wishes to be considered. This code must be entered, even if there is only one channel available in the city for which the applicant is filing.

As an example, if an applicant were filing for Channel 32 in Philadelphia, the call sign box on the fee form would read "109-32". Keep in mind that different channels are available in each city, and it is the duty of the applicant to select a channel which is available in the city in which the applicant is filing.

3. The Box number in the mailing address has been chnaged. The correct mailing address is: Federal Communications Commission, Common Carrier Land Mobile (UHF), P.O. Box 358675, Pittsburgh, PA 15251-5675.

Fee forms will be utilized to enter each application in the proper group for purposes of random selection. Applications with fee forms containing an improper fee code or which have information differing from that which appears on the fee form will be defective, as will applications with fee forms containing city/channel codes

which are non-existent for purposes of this filing.

Questions regarding this notice should be directed to Andy Nachby at (202) 632–6450 or Sam Gumbert at (202) 632–0914.

Federal Communications Commission.

Donna R. Searcy,

Secretary.

[FR Doc. 90–30085 Filed 12–21–90; 8:45 am]

BILLING CODE 6712–01–M

Applications for Consolidated Hearing

1. The Commission has before it the following groups of mutually exclusive applications for three new FM stations:

Applicant, city and state	File No.	MM docket No.
	I.	
A. Patriot Broadcasting Company, Inc.; Hinesville, Georgia.	BPH–890504MC	90–519
B. Bullie Broadcasting Corporation; Hinesville, Georgia.	BPH–890504MN	
Issue Heading and Applicants		
1. Comparative, A, B		
2. Ultimate, A, B		
	II.	
A. Playa Del Sol Broadcasters; Mecca, CA.	BPH–890501MJ	90–504
B. Country Club Communications, Inc.; Mecca, CA.	BPH–890503MC	
C. Christian Service Network Inc.; Mecca, CA.	BPH–890503MF	
D. Anbilog Communications, Inc.; Mecca, CA.	BPH–890503ML	
E. Valdovino Broadcasting, Limited Partnership; Mecca, CA.	BPH–890503MO	
F. Michael Durden; Mecca, CA.	BPH–890503MP	
G. Coachella Valley Wireless Corporation; Mecca, CA.	BPH–890503MG (herein dismissed)	
Issue Heading and Applicants		
1. Air Hazard, B, C		
2. Comparative, A–F		
3. Ultimate, A–F		
	III.	
A. James Wilson III; Dothan, AL.	BPH–891005MF	90–518
B. Circle City Broadcasters, Ltd.; Dothan, AL.	BPH–891006MQ	
C. G. Dean Pearce; Dothan, AL.	BPH–891006NB	
D. Landmark of Alabama, Inc.; Dothan, AL.	BPH–891006NC	
E. Wiregrass Broadcast Associates, Ltd.; Dothan, AL.	BPH–891006NL	
F. Hubcap Classics Radio Network, Ltd.; Dothan, AL.	BPH–891006MR (dismissed herein)	
Issue Heading and Applicant(s)		
1. Air Hazard, A, B, D, E		
2. Comparative, A–E		
3. Ultimate, A–E		

2. Pursuant to section 309(e) of the Communications Act of 1934, as amended, the above applications have been designated for hearing in a consolidated proceeding upon the issues whose headings are set forth below. The text of each of these issues has been standardized and is set forth in its entirety under the corresponding headings at 51 FR 19347, May 29, 1986. The letter shown before each applicant's name, above, is used below to signify whether the issue in question applies to that particular applicant.

3. If there is any non-standardized issue in this proceeding, the full text of the issue and the applicants to which it applies are set forth in an appendix to this Notice. A copy of the complete HDO in this proceeding is available for inspection and copying during normal business hours in the FCC Dockets Branch (room 230), 1919 M street, NW., Washington DC. The complete text may also be purchased from the Commission's duplicating contractor, International Transcription Services, Inc., 2100 M Street, NW., Washington, DC 20037. (Telephone (202) 857–3800).

W. Jan Gay,

Assistant Chief, Audio Services Division.

[FR Doc. 90–30086 Filed 12–21–90; 8:45 am]

BILLING CODE 6712–01–M

FEDERAL MARITIME COMMISSION

Agreement's Filed

The Federal Maritime Commission hereby gives notice of the filing of the following agreement(s) pursuant to section 5 of the Shipping Act of 1984.

Interested parties may inspect and obtain a copy of each agreement at the Washington, DC Office of the Federal Maritime Commission, 1100 L Street, NW., roolm 10325. Interested parties may submit comments on each agreement to the Secretary, Federal Maritime Commission, Washington, DC 20573, within 10 days after the date of the **Federal Register** in which this notice appears. The requirements for comments are found in § 572.603 of title 46 of the Code of Federal Regulations. Interested persons should consult this section before communicating with the Commission regarding a pending agreement.

Agreement No.: 203–011268–002.

Title: New Zealand/United States Interconference and Carrier Discussion Agreement.

Parties:

Pacific Coast-New Zealand Rate Agreement
New Zealand/U.S. Atlantic & Gulf Shipping Lines Rate Agreement
Associated Container Transportation (Australia) Ltd. (Pace Line)
Hamburg-Sudamerikanische Dampfschifffahrts-Gelsellchaft Eggert & Amsinck (Columbus Line)
Australia-New Zealand Direct Line
Nedlloyd Lijen, B.V.
Blue Star Line, Ltd.

Synopsis: The proposed amendment would add ABC Containerline, N.V. as a party to the Agreement. It would also clarify the authority of the Agreement by including the transportation of cargo under service contracts and specifying the non-binding nature of the agreement. The parties have requested a shortened review period.

By Order of the Federal Maritime Commission.

Dated: December 18, 1990.

Joseph C. Polking,

Secretary.

[FR Doc. 90–29998 Filed 12–21–90; 8:45 am]

BILLING CODE 6730–01–M

FEDERAL RESERVE SYSTEM

First Commercial Bancshares, Inc., et al.; Formations of Acquisitions by and Mergers of Bank Holding Companies

The companies listed in this notice have applied for the Board's approval under section 3 of the Bank Holding Company Act (12 U.S.C. 1852) and § 225.14 of the Board's Regulation Y (12 CFR 225.14) to become a bank holding company or to acquire a bank or bank holding company. The factors that are considered in acting on the applications are set forth in section 3(c) of the Act (12 U.S.C. 1842(c)).

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for

processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank or to the offices of the Board of Governors. Any comment on an application that requests a hearing must include a statement of why a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute and summarizing the evidence that would be presented at a hearing.

Unless otherwise noted, comments regarding each of these applications must be received not later than January 10, 1991.

A. **Federal Reserve Bank of Atlanta** (Robert E. Heck, Vice President), 104 Marietta Street, NW., Atlanta, Georgia 30303:

1. First Commercial Bancshares, Inc., Jasper, Alabama; to acquire 100 percent of the voting shares of Citizens Independent Bancorp, Huntsville, Alabama, and thereby indirectly acquire Citizens Independent Bank, Huntsville, Alabama.

2. The Peoples Holding Company, Fort Walton Beach, Florida; to become a bank holding company by acquiring 100 percent of the voting shares of Peoples Federal Savings Bank, Fort Walton Beach, Florida, which after the conversion is to be known as Community & Peoples State Bank, Fort Walton Beach, Florida.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. Pilot Grove Savings Bank Employee Stock Ownership Plan, Pilot Grove, Iowa; to become a bank holding company by acquiring 30 percent of the voting shares of Pilot Bancorp, Inc., Pilot Grove, Iowa, and thereby indirectly acquire Pilot Grove Savings Bank, Pilot Grove, Iowa.

2. WCN Bancorp, Inc., Wisconsin Rapids, Wisconsin; to acquire 100 percent of the voting shares of Community State Bancshares, Inc., Wisconsin Rapids, Wisconsin, and thereby indirectly acquire Community State Bank, Wisconsin Rapids, Wisconsin.

C. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. Mercantile Bancorp, Inc., Quincy, Illinois; to acquire 100 percent of the voting shares of Marine Trust Company of Carthage, Carthage, Illinois.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. Air Academy National Bancorp, U.S. Air Force Academy, Colorado; to become a bank holding company by acquiring 100 percent of the voting shares of Air Academy National Bank, U.S. Air Force Academy, Colorado.

2. Krey Co., Ltd, Pratt, Kansas; to acquire 100 percent of the voting shares of Sharon Valley State Bank, Sharon, Kansas.

3. Meader Insurance Agency, Inc., Waverly, Kansas; to acquire 100 percent of the voting shares of Coffey County Bank Shares, Inc., Burlington, Kansas, and thereby indirectly acquire The Strawn State Bank, Burlington, Kansas.

4. North Park Bancshares, Inc., Walden, Colorado; to become a bank holding company by acquiring North Park State Bank, Walden, Colorado.

E. **Federal Reserve Bank of Dallas** (W. Arthur Tribble, Vice President), 400 South Akard Street, Dallas, Texas 75222:

1. Kingco, Inc., Wharton, Texas; to become a bank holding company by acquiring 55.10 percent of the voting shares of Community State Bank, Boling, Texas.

Board of Governors of the Federal Reserve System, December 17, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-30014 Filed 12-21-90; 8:45 am]

BILLING CODE 6210-01-M

Mellon Bank Corp. et al.; Applications To Engage de Novo in Permissible Nonbanking Activities

The companies listed in this notice have filed an application under § 225.23(a)(1) of the Board's Regulation Y (12 CFR 225.23(a)(1)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to commence or to engage *de novo*, either directly or through a subsidiary, in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding the applications must be received at the Reserve Bank indicated or the offices of the Board of Governors not later than January 10, 1991.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President) 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Mellon Bank Corporation, Pittsburgh, Pennsylvania; to expand the scope of its securities transfer activities into Canada through a *de novo* subsidiary, National Mellon Financial Services, Inc. All these activities are permissible nonbanking activities pursuant to §§ 225.25 (b)(3) and (b)(7) of the Board's Regulation Y.

B. **Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Assistant Vice President) 101 Market Street, San Francisco, California 94105:

1. Palm Desert Investments, Palm Desert, California; to engage *de novo* in mortgage lending activities pursuant to § 225.25(b)(1) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 17, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-30015 Filed 12-21-90; 8:45 am]

BILLING CODE 6210-01-M

Mid-Am, Inc., et al.; Acquisitions of Companies Engaged in Permissible Nonbanking Activities

The organizations listed in this notice have applied under § 225.23(a)(2) or (f) of the Board's Regulation Y (12 CFR 225.23(a)(2) or (f)) for the Board's approval under section 4(c)(8) of the Bank Holding Company Act (12 U.S.C. 1843(c)(8)) and § 225.21(a) of Regulation Y (12 CFR 225.21(a)) to acquire or control voting securities or assets of a company engaged in a nonbanking activity that is listed in § 225.25 of Regulation Y as closely related to

banking and permissible for bank holding companies. Unless otherwise noted, such activities will be conducted throughout the United States.

Each application is available for immediate inspection at the Federal Reserve Bank indicated. Once the application has been accepted for processing, it will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing on the question whether consummation of the proposal can "reasonably be expected to produce benefits to the public, such as greater convenience, increased competition, or gains in efficiency, that outweigh possible adverse effects, such as undue concentration of resources, decreased or unfair competition, conflicts of interests, or unsound banking practices." Any request for a hearing on this question must be accompanied by a statement of the reasons a written presentation would not suffice in lieu of a hearing, identifying specifically any questions of fact that are in dispute, summarizing the evidence that would be presented at a hearing, and indicating how the party commenting would be aggrieved by approval of the proposal.

Unless otherwise noted, comments regarding each of these applications must be received at the Reserve Bank indicated for the application or the offices of the Board of Governors not later than January 10, 1991.

A. **Federal Reserve Bank of Cleveland** (John J. Wixted, Jr., Vice President), 1455 East Sixth Street, Cleveland, Ohio 44101:

1. Mid-Am, Inc., Bowling Green, Ohio; to acquire Citizens Federal Savings and Loan Association, Bellefontaine, Ohio, and thereby engage in savings and loan activities pursuant to section 225.25(b)(9) of the Board's Regulation Y.

B. **Federal Reserve Bank of Chicago** (David S. Epstein, Vice President), 230 South LaSalle Street, Chicago, Illinois 60690:

1. First Michigan Bank Corporation, Holland, Michigan; to acquire FMB-Financial Advisory Services, Inc., Holland, Michigan, and thereby engage in providing investment and financial advice pursuant to § 225.25(b)(4) of the Board's Regulation Y.

Board of Governors of the Federal Reserve System, December 17, 1990.

Jennifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-30016 Filed 12-21-90; 8:45 am]

BILLING CODE 6210-01-M

Laurence A. Tisch, et al.; Change in Bank Control Notices; Acquisitions of Shares of Banks or Bank Holding Companies

The notificants listed below have applied under the Change in Bank Control Act (12 U.S.C. 1817(j)) and § 225.41 of the Board's Regulation Y (12 CFR 225.41) to acquire a bank or bank holding company. The factors that are considered in acting on the notices are set forth in paragraph 7 of the Act (12 U.S.C. 1817(j)(7)).

The notices are available for immediate inspection at the Federal Reserve Bank indicated. Once the notices have been accepted for processing, they will also be available for inspection at the offices of the Board of Governors. Interested persons may express their views in writing to the Reserve Bank indicated for that notice or to the offices of the Board of Governors. Comments must be received not later than January 4, 1991.

A. **Federal Reserve Bank of Boston** (Robert M. Brady, Vice President), 600 Atlantic Avenue, Boston, Massachusetts 02106:

1. Laurence A. Tisch, Preston R. Tisch, Andrew H. Tisch, Daniel R. Tisch, James S. Tisch, and Thomas J. Tisch, New York, New York; to acquire up to 14.9 percent of the voting shares of Bank of Boston Corporation, Boston, Massachusetts, and thereby indirectly acquire The First National Bank of Boston, Boston, Massachusetts; Casco Northern Bank, N.A., Portland, Maine; Bank of Boston-Connecticut, Waterbury, Connecticut; Rhode Island Hospital Trust National Bank, Providence, Rhode Island; and Bank of Vermont, Burlington, Vermont.

B. **Federal Reserve Bank of St. Louis** (Randall C. Sumner, Vice President), 411 Locust Street, St. Louis, Missouri 63166:

1. Galen Brent Greer, Paris, Tennessee, to acquire 25.47 percent; and Barry Park McIntosh, Paris, Tennessee, to acquire 41.85 percent of the voting shares of Security Bancshares, Inc., Paris, Tennessee, and thereby indirectly acquire Security Bank and Trust Company, Paris, Tennessee.

C. **Federal Reserve Bank of Minneapolis** (James M. Lyon, Vice President), 250 Marquette Avenue, Minneapolis, Minnesota 55480:

1. John A. McHugh Revocable Trust; to acquire 28.88 percent of the voting shares of Maple Lake Bancorporation, Inc., Edina, Minnesota, and thereby indirectly acquire Security State Bank of Maple Lake, Maple Lake, Minnesota.

D. **Federal Reserve Bank of Kansas City** (Thomas M. Hoenig, Vice President), 925 Grand Avenue, Kansas City, Missouri 64198:

1. Jerrold G. Humptman, Lakewood, Colorado; to acquire 50 percent; and Lee Anne Lewis, Littleton, Colorado, to acquire 50 percent of the voting shares of Columbine Valley Bank and Trust, Littleton, Colorado.

E. **Federal Reserve Bank of San Francisco** (Kenneth R. Binning, Assistant Vice President), 101 Market Street, San Francisco, California 94105:

1. Dr. Roger Chih-Shen Lin, Honolulu, Hawaii; to acquire 100 percent of the voting shares of EastWest Financial Group, Inc., Honolulu, Hawaii, and thereby indirectly acquire EastWest Bank, National Association, Kihei, Hawaii.

Board of Governors of the Federal Reserve System, December 17, 1990.

Jenifer J. Johnson,

Associate Secretary of the Board.

[FR Doc. 90-30017 Filed 12-21-90; 8:45 am]

BILLING CODE 6210-01-M

DEPARTMENT OF HEALTH AND HUMAN SERVICES

National Institutes of Health

National Institute of Arthritis and Musculoskeletal and Skin Diseases Meeting, National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases

Pursuant to Public Law 91-463, notice is hereby given of the meeting of the National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases on January 28 and 29, 1991. The meeting will be held at the Woodcliff Lake Hilton, Tice Boulevard & Chestnut Ridge Road, Woodcliff Lake, New Jersey 07675. The subcommittees will meet January 28, 8 p.m. to approximately 10 p.m. and the full board will meet January 29, 8 a.m. to approximately 11 a.m. The meetings, which will be open to the public, are being held to discuss the Board's activities and to continue evaluation of the National effort to combat arthritis and musculoskeletal and skin diseases. Attendance by the public will be limited to space available.

Ms. Suzanne A. Sangalan, Committee Management Officer, National Advisory Board for Arthritis and Musculoskeletal and Skin Diseases, 1801 Rockville Pike, suite 500, Rockville, Maryland 20852, (301) 496-0803, will provide on request an agenda and roster of the members. Summaries of the meeting may also be obtained by contacting her office.

Dated: December 17, 1990.

Betty J. Beveridge,

NIH Committee Management Officer.

[FR Doc. 90-29975 Filed 12-21-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute of Environmental Health Sciences Meeting of National Advisory Environmental Health Sciences Council

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Advisory Environmental Health Sciences Council, January 24-25, 1991 at the National Institute of Environmental Health Sciences, Building 101 Conference room, South Campus, Research Triangle Park, North Carolina.

This meeting will be open to the public on January 24 from 9 a.m. to approximately 2 p.m. for the report of the Acting Director, NIEHS, and for discussion of the NIEHS budget, program policies and issues, recent legislation, and other items of interest. Attendance by the public will be limited to space available.

In accordance with the provisions set forth in secs. 552b(c)(4) and 552b(c)(6), title 5, U.S.C. and sec. 10(d) of Public Law 92-463, the meeting will be closed to the public January 24, from approximatley 2 p.m. to adjournment on January 25, for the review, discussion and evaluation of individual grant applications.

These applications and the discussions could reveal confidential trade secrets or commercial property such as patentable material, and personal information concerning individuals associated with the applications, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy.

Winona Herrell, Committee Management Officer, NIEHS, Bldg. 31, rm. 2B55, NIH, Bethesda, MD 20892 (301) 496-3511, will provide summaries of the meeting and rosters of council members.

Dr. Anne Sassaman, Director, Division of Extramural Research and Training, NIEHS, P.O. Box 12233, Research Triangle Park, North Carolina 27709, (919) 541-7723, FTS 629-7723, will furnish substantive program information.

(Catalog of Federal Domestic Assistance Program Nos 13.113, Biological Response to Environmental Agents; 13.114, Applied Toxicological Research and Testing; 13.115, Biometry and Risk Estimation; 13.894, Resource and Manpower Development, National Institutes of Health)

Dated: December 11, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-29976 Filed 12-21-90; 8:45 am]

BILLING CODE 4140-01-M

National Institute on Deafness and Other Communication Disorders; Meeting of the National Deafness and Other Communication Disorders Advisory Board

Pursuant to Public Law 92-463, notice is hereby given of the meeting of the National Deafness and Other Communication Disorders Advisory Board on January 14, 1991. The meeting will take place from 9 a.m. to 5 p.m. in Conference room 6, Building 31C, National Institutes of Health, 9000 Rockville Pike, Bethesda, Maryland 20892.

The meeting will be open to the public to discuss the Board's activities and will include reports from the Board's subcommittees. Attendance by the public will be limited to space available.

Summaries of the Board's meeting and a roster of members may be obtained from Mrs. Monica Davies, National Institute on Deafness and Other Communication Disorders, Building 31, room B2C06, National Institutes of Health, Bethesda, Maryland 20892, 301-402-1129, upon request.

Dated: December 14, 1990.

Betty J. Beveridge,

Committee Management Officer, NIH.

[FR Doc. 90-29977 Filed 12-21-90; 8:45 am]

BILLING CODE 4140-01-M

DEPARTMENT OF THE INTERIOR

Bureau of Land Management

[MT-920-01-4120-14; NDM 78697]

Coal Lease Offering

AGENCY: Bureau of Land Management, Interior.

ACTION: Notice of Coal Lease Offering By Sealed Bid NDM 78697—The Coteau Properties Company.

SUMMARY: Notice is hereby given that the local resources in the lands described below in Mercer County, North Dakota, will be offered for competitive lease by sealed bid. This offering is being made as a result of an application filed by The Coteau Properties Company, in accordance with the provisions of the Minerals Leasing Act of 1920 (41 Stat. 437; 30 U.S.C. 181-237), as amended.

An Environmental Assessment of the proposed coal development and related requirements for consultation, public involvement and hearing have been completed in accordance with 43 CFR part 3425. The results of these activities were a finding of no significant environmental impact.

The tract will be leased to the qualified bidder of the highest cash amount provided that the high bid meets the fair market value of the coal resource. The minimum bid for the tract is $100 per acre, or fraction thereof. No bid that is less than $100 per acre, or fraction thereof, will be considered. The minimum bid is not intended to represent fair market value. The fair market value will be determined by the authorized officer after the sale.

Coal Offered: The coal resource to be offered consists of all recoverable reserves in the following described lands located approximately 10 miles north of the town of Beulah:

T. 145 N., R. 87 W., 5th P.M.
Sec. 6: SE¼
Containing 160 acres
Mercer County, North Dakota.

The tract contains an estimated 2.9 million tons of recoverable lignite. The recoverable coal seam in this tract is the Beulah seam. The seam averages 15.4 feet in thickness over the 91 minable acres of the tract. The stripping ratio for the tract is 7 to 1 (bank cubic yards per ton). The Coal quality, as received, averages 6,970 BTU/lb., 37.19 percent moisture, 5.80 percent ash, 0.53 percent sulfur, 31.96 percent fixed carbon, and 35.05 percent volatile matter.

Rental and Royalty: A lease issued as a result of this offering will provide for payment of an annual rental of $3 per acre, or fraction thereof, and a royalty payable to the United States of 12.5 percent of the value of coal mined by surface methods and 8 percent of the value of coal mined by underground methods. The value of the coal shall be determined in accordance with 43 CFR 3485.2.

DATES: Lease Sale—The lease sale will be held at 11 a.m., Wednesday, January 23, 1991, in the Conference Room on the Sixth Floor of the Granite Tower Building, Bureau of Land Management, 222 North 32nd Street, Billings, Montana 59107.

Bids—Sealed bids must be submitted on or before 10 a.m., Wednesday, January 23, 1991, to the cashier, Bureau of Land Management, Montana State Office, Second Floor, Granite Tower Building, 222 North 32nd Street, Post Office Box 36800, Billings, Montana 59107. The bids should be sent by certified mail, return receipt requested, or be hand-delivered. The cashier will

issue a receipt for each hand-delivered bid. Bids received after that time will not be considered.

SUPPLEMENTARY INFORMATION: Bidding instructions for the offered tract are included in the Detailed Statement of Lease Sale. Copies of the statement and the proposed coal lease are available at the Montana State Office. Casefile documents are also available for public inspection at the Montana State Office.

Dated: December 17, 1990.

Donald L. Gilchrist,

Acting State Director.

[FR Doc. 90-30067 Filed 12-21-90; 8:45 am]

BILLING CODE 4310-DN-M

[ID-050-4212-08]

Intent to Amend the Bennett Hills and Sun Valley Management Framework Plans and the Monument Resource Management Plan

AGENCY: Bureau of Land Management [BLM], Interior.

ACTION: Notice of intent to prepare a planning amendment for public lands in Blaine, Camas, Gooding, Jerome, and Lincoln counties, Idaho.

SUMMARY: Pursuant to 43 CFR part 1600, the Shoshone District of the Bureau of Land Management proposes to consider amending the Sun Valley Management Framework Plan [MFP], the Bennett Hills MFP, and the Monument Resource Management Plan [RMP] to change five parcels from a retention category to a transfer category.

DATES: Comments concerning this plan amendment must be received by January 23, 1991.

ADDRESSES: Written comments concerning this plan amendment should be sent to the BLM District Manager, Shoshone District Office, P.O. Box 2-B, Shoshone, ID 83352.

FOR FURTHER INFORMATION CONTACT: Harold Brown, Shoshone BLM District Office, P.O. Box 2-B, Shoshone, ID 83352, telephone (208) 886-2206.

SUPPLEMENTARY INFORMATION: The amendment proposed for the Monument RMP includes the change from retention to transfer category of approximately 2,100 acres.

The amendment proposed for the Bennett Hills MFP includes the change from retention to transfer of approximately 200 acres.

The proposed amendment to the Sun Valley MFP would change 80 acres from the retention to transfer category.

The plan amendments will include the proposals for changing plan status on these parcels and appropriate alternatives to these proposals. The following resources will be considered in preparing the planning amendment: lands, wildlife, range, minerals, cultural, watershed/soils, and threatened/endangered plant and animal species. Staff members representing each resource will make the planning team.

Transfer designation is expected to be the only issue of this amendment and is not expected to be controversial.

No public meetings are scheduled.

Location and Availabiity of Documents Relevant to the Planning process: All documents are located at the Shoshone District Office. The hours of availability are 7:45 a.m. to 4:30 p.m., Monday through Friday, except holidays.

Janis Van Wyhe,

Associate District Manager.

[FR Doc. 90-29947 Filed 12-21-90; 8:45 am]

BILLING CODE 4310-GG-M

[NV-930-91-4212-24; N-47788]

Amended Notice of Realty Action; Nevada

The Notice of Realty Action published in the **Federal Register** (53 FR 8809) on March 17, 1988 is hereby amended as to the terms of the lease.

In accordance with the State Director's decision dated October 5, 1988, the BLM proposes to issue a 5-year lease with the right of survivorship during the lease term and consideration for renewal if final disposition of the matter has not been resolved through the land use planning process.

All other terms of the original notice continue to apply.

Dated: December 12, 1990.

Gary Ryan,

Acting (District Manager, Las Vegas, NV).

[FR Doc. 90-29966 Filed 12-21-90; 8:45 am]

BILLING CODE 4310-HC-M

National Park Service

Kenai Fjords National Park; Availability of Plan of Operations

AGENCY: National Park Service, Interior.

ACTION: Notice of availability.

SUMMARY: Notice is hereby given that pursuant to the provisions of section 2 of the Act of September 28, 1976, 16 U.S.C. 1901 et seq., and in accordance with the provisions of § 9.17 of 36 CFR part 9A, John Kinney has filed a plan of operations in support of proposed mining operations on lands embracing the Surprise Bay lode claims No's. 1 and 2 located within the Kenai Fjords National Park.

ADDRESSES: This plan is available for inspection during normal business hours at the following location: Alaska Regional Office—Minerals Management Division, National Park Service, 2525 Gambell Street, Anchorage, Alaska 99503-2892.

FOR FURTHER INFORMATION CONTACT: Floyd Sharrock of the National Park Service—Minerals Management Division at the address given above; telephone 907/257-2626.

David B. Ames,

Acting Regional Director.

[FR Doc. 90-30060 Filed 12-21-90; 8:45 am]

BILLING CODE 4310-AO-M

Transfer of Administrative Jurisdiction, El Malpais National Monument

Certain lands and/or interest therein have been acquired by the Bureau of Land Management within the boundaries of El Malpais National Monument since its establishment on December 31, 1987. Notice is hereby given that, pursuant to the provisions of Public Law 100-225, sections 103 and 502, 101 Stat. 1539, 1544, administrative jurisdiction is now in the National Park Service, subject to applicable laws and regulations.

The lands and/or interest therein, subject to this notice include 39,479.64 acres of mineral interest acquired by the Bureau of Land Management.

Maps and legal descriptions of lands and minerals within El Malpais National Monument may be reviewed at the Office of the Regional Director, National Park Service, Southwest Region, 1100 Old Sante Fe Trail, Santa Fe, New Mexico 87501, and at 1100 L Street, NW., Washington, DC 20004.

Dated: November 28, 1990.

Ernest W. Ortega,

Acting Regional Director, Southwest Region.

[FR Doc. 90-30058 Filed 12-21-90; 8:45 am]

BILLING CODE 4310-70-M

Transfer of Administrative Jurisdiction, El Malpais National Monument

Certain lands and/or interest therein were under the jurisdiction and administration of the United States Forest Service and the Bureau of Land Management before the establishment of El Malpais National Monument on December 31, 1987. Notice is hereby given that, pursuant to the provisions of

Public Law 100–225, sections 102, 103, and 502, 101 Stat. 1539, 1544, administrative jurisdiction is now in the National Park Service, subject to applicable laws and regulations.

The lands and/or interest therein, subject to this order, include fee interest in 4,402.43 acres of land previously administered by the U.S. Forest Service, and fee interest in 92,094.016 acres of land and 3,491.05 acres of mineral interest previously administered by the Bureau of Land Management. Of the 92,094.016 acres, State Highway 117 currently encumbers 53.036 acres.

Maps and legal descriptions of lands within El Malpais National Monument may be reviewed at the Office of the Regional Director, National Park Service, Southwest Region, 1100 Old Santa Fe Trail, Santa Fe, New Mexico 87501, and at the Office of the National Park Service, Land Resources Division, 1100 L Street, NW., Washington, DC 20004.

Dated: November 28, 1990.

Ernest W. Ortega,

Acting Regional Director, Southwest Region.

[FR Doc. 90–30059 Filed 12–21–90; 8:45 am]

BILLING CODE 4310–70–M

DEPARTMENT OF JUSTICE

Drug Enforcement Administration

[Docket No. 90–39]

Dobson Drug Co., Inc., Bowdon, GA; Hearing

Notice is hereby given that on May 4, 1990, the Drug Enforcement Administration, Department of Justice, issued to Dobson Drug Company, Inc., an Order to Show Cause as to why the Drug Enforcement Administration should not revoke your DEA Certificate of Registration, AD1202768, and deny any pending applications for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on January 17, 1991, commencing at 9:30 a.m., at the U.S. Courthouse and Post Office Building, 18 Greenville Street, Third Floor Courtroom, Newnan, Georgia.

Dated: December 17, 1990.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 90–30054 Filed 12–21–90; 8:45 am]

BILLING CODE 4410–09–M

[Docket No. 90–50]

Super-Rite Drugs, Decatur, GA; Hearing

Notice is hereby given that on April 13, 1990, the Drug Enforcement Administration, Department of Justice, issued to Super-Rite Drugs, an Order to Show Cause as to why the Drug Enforcement Administration should not deny your application for a DEA Certificate of Registration.

Thirty days have elapsed since the said Order to Show Cause was received by Respondent, and written request for a hearing having been filed with the Drug Enforcement Administration, notice is hereby given that a hearing in this matter will be held on January 16, 1991, commencing at 9:30 a.m., at the U.S. Courthouse and Post Office Building, 18 Greenville Street, Third Floor Courtroom, Newnan, Georgia.

Dated: December 17, 1990.

Robert C. Bonner,

Administrator, Drug Enforcement Administration.

[FR Doc. 90–30055 Filed 12–21–90; 8:45 am]

BILLING CODE 4410–09–M

DEPARTMENT OF LABOR

Office of the Secretary

All Items Consumer Price Index for All Urban Consumers United States City Average

Pursuant to the requirements of Public Law 95–602, I hereby certify that the Consumer Price Index for All Urban Consumers rose by 6.3 percent between October 1989 and October 1990 from a level of 125.6 (1982–84=100) in October 1989 to a level of 133.5 (1982–84=100) in October 1990. Signed at Washington, DC, on the 17th day of December 1990.

Roderick A. DeArment,

Acting Secretary of Labor.

[FR Doc. 90–29994 Filed 12–21–90; 8:45 am]

BILLING CODE 4510–24–M

Employment and Training Administration

Investigations Regarding Certifications of Eligibility to Apply for Worker Adjustment Assistance

Petitions have been filed with the Secretary of Labor under section 221(a) of the Trade Act of 1974 ("the Act") and are identified in the appendix to this notice. Upon receipt of these petitions, the Director of the Office of Trade Adjustment Assistance, Employment and Training Administration, has instituted investigations pursuant to section 221(a) of the Act.

The purpose of each of the investigations is to determine whether the workers are eligible to apply for adjustment assistance under title II, chapter 2, of the Act. The investigations will further relate, as appropriate, to the determination of the date on which total or partial separations began or threatened to begin and the subdivision of the firm involved.

The petitioners or any other persons showing a substantial interest in the subject matter of the investigations may request a public hearing, provided such request is filed in writing with the Director, Office of Trade Adjustment Assistance, at the address show below, not later than January 3, 1991.

Interested persons are invited to submit written comments regarding the subject matter of the investigations to the Director, Office of Trade Adjustment Assistance, at the address shown below, not later than January 3, 1991.

The petitions filed in this case are available for inspection at the Office of the Director, Office of Trade Adjustment Assistance, Employment and Training Administration, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210.

Signed at Washington, DC this 10th day of December 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

APPENDIX

Petitioner (Union/Workers/Firm)	Location	Date received	Date of petition	Petition No.	Articles produced
Arden/Benhar (Wkrs)	Los Angeles, CA	12/10/90	11/16/90	25,155	Kitchen textiles.
Bottoms U.S.A. (Wkrs)	Auburn, ME	12/10/90	11/29/90	25,156	Urethane soles.
Bulova Technologies, Inc. (Wkrs)	Valley Stream, NY	12/10/90	11/27/90	25,157	Military devices.
Burro Crane (IAMAW)	Chicago, IL	12/10/90	11/26/90	25,158	Cranes parts.
Control Data Corp Manufac/Wits Div. (Wkrs)	Bloomington, MN	12/10/90	11/28/90	25,159	Computers.
Eaton Corp. (Wkrs)	Fremont, OH	12/10/90	11/26/90	25,160	Auto switches.
Energy Resources, Inc. (Wkrs)	Brockway, PA	12/10/90	11/15/90	25,161	Coal.
Excalibur Auto	Milwaukee, WI	12/10/90	11/12/90	25,162	Luxury cars.
Gainesboro Industries, Inc. (Wkrs)	Gainesboro, TN	12/10/90	11/28/90	25,163	Clothing.
Gulton Industries (IUE)	Methuchen, NJ	12/10/90	11/21/90	25,164	Electronic components.
H.P. Deuscher Co. (Wkrs)	Hamilton, OH	12/10/90	11/27/90	25,165	Iron casting.
Hygiene Industries Plant #1&2 (Wkrs)	Brooklyn, NY	12/10/90	11/29/90	25,166	Shower curtains.
Jacob Sigel (ACTWU)	Philadelphia, PA	12/10/90	11/20/90	25,167	Coats.
Johnathan Michael (Workers)	New York, NY	12/10/90	11/27/90	25,168	Coats.
Johnson Control (Sys(Cont)Prd.Div. (Wkrs)	Watertown, WI	12/10/90	11/27/90	25,169	Gas controls.
Laura Fashions (Wkrs)	Avoca, PA	12/10/90	11/15/90	25,170	Dresses.
Lear Plastics Corp. (Wkrs)	Mendon, MI	12/10/90	11/26/90	25,171	Auto articles.
Loffland Brothers Co., Hdqters. (Wkrs)	Tulsa, OK	12/10/90	11/28/90	25,172	Oil and Gas.
Loffland Brothers Co., Rocky Mtn. (Wkrs)	Casper, WY	12/10/90	11/28/90	25,173	Oil and Gas.
Loffland Brothers Co., S. Western (Wkrs)	New Braunfels, TX	12/10/90	11/28/90	25,174	Oil and Gas.
Loffland Brothers Co., Southern (Wkrs)	New Iberia, LA	12/10/90	11/28/90	25,175	Oil and Gas.
Loffland Brothers Co., Western (Wkrs)	Bakersfield, CA	12/10/90	11/26/90	25,176	Oil and Gas.
Marathon Oil Co. (Wkrs)	Houston, TX	12/10/90	11/25/90	25,177	Oil and Gas.
Modern Coat Co. (ACTWU)	Philadelphia, PA	12/10/90	11/20/90	25,178	Suits.
Norwich Shoe Co., Inc. (Wkrs)	Norwich, NY	12/10/90	11/27/90	25,179	Footwear.
Phyllis Fashions (ILGWU)	Union City, NJ	12/10/90	11/29/90	25,180	Swimsuits.
Piezo Electric Products (IUE)	Metuchen, NJ	12/10/90	11/21/90	25,181	Fans.
Ranco Inc. (Wkrs)	Plain City, OH	12/10/90	11/19/90	25,182	Control devices.
Richman Brother's (Wkrs)	Cleveland, OH	12/10/90	11/27/90	25,183	Clothing.
Rome Turney Radiator Co. (Wkrs)	Rome, NY	12/10/90	11/19/90	25,184	Cooper.
Serac Mfg. (Wkrs)	Priest River, ID	12/10/90	11/23/90	25,185	Ski Wear.
Superior Clothing Co. (ACTWU)	Philadelphia, PA	12/10/90	11/19/90	25,186	Suits.
TXO Products, Corp. (Wkrs)	Shreveport, LA	12/10/90	11/26/90	25,187	Oil and Gas.
Warnaco Knitwear Div. (Wkrs)	Altoona, PA	12/10/90	11/28/90	25,188	Sweaters.
Warnaco Knitwear Div. (Wkrs)	Duncansville, PA	12/10/90	11/28/90	25,189	Sweaters.
Western Atlas International (Wkrs)	Houma, LA	12/10/90	11/27/90	25,190	Computer logging.
White Consolida. Industries, Inc. (Wkrs)	Mansfield, OH	12/10/90	11/13/90	25,191	Washer and dryer.
Wrangler-Elkton Plant (Wkrs)	Elkton, VA	12/10/90	12/03/90	25,192	Jeans.
Wranger-Orange Plant (Wkrs)	Orange, VA	12/10/90	12/03/90	25,193	Jeans

[FR Doc. 90-29981 Filed 12-21-90; 8:45 am]

BILLING CODE 4510-30-M

Employment and Training Administration

[TA-W-24,993]

Behrens Manufacturing Co. Winona, MN; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 29, 1990 in response to a worker petition which was filed on October 29, 1990 on behalf of workers at Behrens Manufacturing Co., Winona, Minnesota.

The petitioner has requested that the petition be withdrawn. Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 14th day of December, 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-29984 Filed 12-21-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-25,022]

Brush Fuses, Inc, Des Plaines, IL; Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on November 5, 1990 in response to a worker petition which was filed on November 5, 1990 on behalf of workers at Brush Fuses, Incorporated, Des Plaines, Illinois.

The petitioning group of workers is subject to an ongoing investigation for which a determination has not yet been issued (TA-W-24,997). Consequently, further investigation in this case would serve no purpose, and the investigation has been terminated.

Signed at Washington, DC this 14th day of December 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-29983 Filed 12-21-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,906]

Fleck, Inc., Fayette, MS, Termination of Investigation

Pursuant to section 221 of the Trade Act of 1974, an investigation was initiated on October 9, 1990 in response to a worker petition which was filed on October 9, 1990 on behalf of workers at Fleck, Incorporated, Fayette, Mississippi.

A negative determination applicable to the petitioning group of workers was issued on November 20, 1990 (TA-W-24,871). No new information is evident which would result in a reversal of the Department's previous determination. Consequently, further investigation in this case would serve no purpose, the the investigation has been terminated.

Signed at Washington, DC this 14th day of December, 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-29985 Filed 12-21-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,066]

Morse Tools, Inc., New Bedford, MA; Amended Certification Regarding Eligibility To Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974, (19 U.S.C. 2273) the Department of Labor issued a Certification of Eligibility to Apply for Worker Adjustment Assistance on May 3, 1990, applicable to all workers of Morse Tools, Inc., New Bedford Massachusetts. The notice was published in the **Federal Register** on May 30, 1990 (55 FR 21955).

Based on new information from the company, several workers are being retained for close down operations beyond the February 13, 1990 termination date. Therefore, the certification is amended by deleting the termination date. The amended notice applicable to TA-W-24,066 is hereby issued as follows:

"All workers of Morse Tools, Inc., New Bedford, Massachusetts who became totally or partially separated from employment on or after February 13, 1989 are eligible to apply for adjustment assistance under section 223 of the Trade Act of 1974."

Signed at Washington, DC this 13th day of December, 1990.

Robert O. Deslongchamps,

Director, Office of Legislation and Actuarial Serives, UIS.

[FR Doc. 90-29987 Filed 12-21-90; 8:45 am]

BILLING CODE 4510-30-M

Determinations Regarding Eligibility to Apply for Worker Adjustment Assistance

In accordance with section 223 of the Trade Act of 1974 (19 USC 2273) the Department of Labor herein presents summaries of determinations regarding eligibility to apply for adjustment assistance issued during the period of December 1990.

In order for an affirmative determination to be made and a certification of eligibility to apply for adjustment assistance to be issued, each of the group eligibility requirements of section 222 of the Act must be met.

(1) That a significant number or proportion of the workers in the workers' firm, or an appropriate subdivision thereof, have become totally or partially separated,

(2) That sales or production, or both, of the firm or subdivision have decreased absolutely, and

(3) That increases of imports of articles like or directly competitive with articles produced by the firm or appropriate subdivision have contributed importantly to the separations, or threat thereof, and to the absolute decline in sales or production.

Negative Determinations

In each of the following cases the investigation revealed that criterion (3) has not been met. A survey of customers indicated that increased imports did not contribute importantly to worker separations at the firm.

TA-W-24, 923; Shakertown Corp., Winlock, WA

TA-W-24, 920; Remington Arms Co., Ilion, NY

TA-W-24, 932; Hamilton Standard Control Systems, New Lexington, OH

TA-W-24, 903; Curtis Wire Products Co., Petoskey, MI

TA-W-24, 886; Talon, Inc., Jersey City, NJ

TA-W-24, 955; Price Brothers, Dayton, OH

In the following cases, the investigation revealed that the criteria for eligibility has not been met for the reasons specified.

TA-W-24-941; Cinco Services, Inc., Alice TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade of 1974.

TA-W-24-942; Cinco Services, Inc., Freer TX

The workers' firm does not produce an article as required for certification under section 222 of the Trade of 1974.

TA-W-24-933; Willamette Business Machine Ltd, Salem, OR

The workers' firm does not produce an article as required for certification under section 222 of the Trade of 1974.

TA-W-24-863; RCA Business Telephone Systems, Mt. Laurel, NJ

The workers' firm does not produce an article as required for certification under section 222 of the Trade of 1974.

TA-W-24, 931; II-VI, Inc., Saxonburg, PA

Increased imports did not contribute importantly to worker separations at the firm.

TA-W-24-935; Adria Laboratories, Columbus, OH

The workers' firm does not produce an article as required for certification under section 222 of the Trade of 1974.

TA-W-24-858; National Starch & Chemical Co, Plainfield, NJ

The investigation revealed that criterion (2) has not been met. Sales or production did not decline during the relevant period as required for certification.

Affirmative Determinations

TA-W-24, 767; Unique Manufacturing, Inc., Jersey City, NJ

A certification was issued covering all workers separated on or after July 27, 1989.

TA-W-24, 902; Colorado Crystal Corp., Loveland, CO

A certification was issued covering all workers separated on or after September 18, 1989.

TA-W-24, 875; Hamilton Digital Controls, Inc. Utica, NY

A certification was issued covering all workers separated on or after September 14, 1989.

TA-W-24, 917; Oxford of Cumming Cumming, GA

A certification was issued covering all workers separated on or after September 25, 1989 and before November 30, 1990.

TA-W-24, 796; General Electric, Aerospace Group, Defense Systems, Dept., Pittsfield, MA

A certification was issued covering all workers separated on or after August 17, 1989.

I hereby certify that the aforementioned determinations were issued during the month of December 1990. Copies of these determinations are available for inspection in room C4318, U.S. Department of Labor, 200 Constitution Avenue, NW. Washington, DC 20210 during normal business hours or will be mailed to persons to write to the above address.

Dated: December 17, 1990.

Marvin M. Fooks,

Director, Office of Trade Adjustment Assistance.

[FR Doc. 90-29982 Filed 12-21-90; 8:45 am]

BILLING CODE 4510-30-M

[TA-W-24,784]

Olin Hunt Specialty Products, Incorporated Limerock, Rhode Island; Revised Determination on Reconsideration

On December 6, 1990 the Department issued an Affirmative Determination Regarding Application for Reconsideration for workers and former workers of Olin Hunt Specialty Products, Inc., Limerock, Rhode Island.

The affirmed notice will soon be published in the Federal Register.

The Limerock Plant produced mainly intermediate chemicals for the photographic industry. Investigation findings show that in 1989 a Japanese firm purchased the chemical facilities of Olin Hunt and became the principal customer of photographic chemicals from Limerock.

Findings on reconsideration show that the new Japanese owner began to import photographic chemicals in 1990 of the type produced at Limerock. The Limerock facility reported decreased production of photographic chemicals in the first half of 1990 compared to the same period in 1989. Production at the Limerock facility is scheduled to cease by the end of December 1990 and all remaining employees will be separated by June 30, 1991.

Conclusion

After careful review of the additional facts obtained on reconsideration, it is concluded that increased imports of articles like or directly competitive with the intermediate chemicals produced at Olin Hunt Specialty Products, Limerock, Rhode Island contributed importantly to the decline in sales or production and to the total or partial separation of workers at Olin Hunt Specialty Products, Inc., Limerock, Rhode Island. In accordance with the provisions of the Trade Act of 1974, I make the following revised determination:

"All workers of Olin Hunt Specialty Products, Inc., Limerock, Rhode Island who became totally or partially separated from employment on or after September 1, 1990 are eligible to apply for adjustment assistance under Section 223 of the Trade Act of 1974."

Signed at Washington, DC, this 13th day of December 1990.

Rober O. Deslongchamps,

Director, Office of Legislation and Actuarial Services, UIS.

[FR Doc. 90-29986 Filed 12-21-90; 8:45 am]

BILLING CODE 4510-30-M

Advisory Panel on the Dictionary of Occupational Titles (APDOT); Open Meeting

AGENCY: Employment and Training Administration, Labor.

SUMMARY: The Advisory Panel on the Dictionary of Occupational Titles (APDOT) was established in accordance with the Federal Advisory Committee Act (Pub. L. 92-463) on August 28, 1990.

The APDOT was established as part of the Secretary of Labor's Workforce Quality Agenda to improve the quality of the work force. The APDOT will assist the Department of Labor in meeting the goals of the Secretary's Agenda by providing a diversified range of user perspectives on the Dictionary of Occupational Titles (DOT). The DOT is a document which is used extensively in business, education and government. It defines, classifies and describes occupations in the labor market. The last edition of the DOT was published in 1977. The APDOT will provide advice on a new edition.

The APDOT will report to and advise the Assistant Secretary for Employment and Training on the development, publication and dissemination of the DOT.

TIME: The meeting will begin at 1:30 p.m. on January 14, 1991, and continue until 4:30 p.m. that day; and will reconvene at 8:30 a.m. on January 15, 1991, and adjourn at 3:30 p.m. that day.

PLACE: The Department of Labor, 200 Constitution Avenue, NW., C5515, Seminar room 1A, Washington, DC 20210.

AGENDA: Matters to be considered as part of the agenda for the APDOT meeting include:

- User Survey Status Report.
- Occupational Analysis Methods Review Status Report.
- Canadian Occupational Analysis System.
- ES Use of the DOT.

PUBLIC PARTICIPATION: The meeting will be open to the public. A half hour (8:30-9 a.m.) on January 15 will be set aside for public comments. Individuals wishing to speak to the panel should call Dr. Marilyn Silver at 202-535-0161. Seating will be available for the public on a first-come, first-serve bases.

Individuals or organizations wishing to submit written statements should send 10 copies to Dr. Marilyn B. Silver, Executive Director, Advisory Panel on the Dictionary of Occupational Titles, room N4470, U.S. Department of Labor 200 Constitution Avenue, NW., Washington, DC 20210.

FOR FURTHER INFORMATION CONTACT: Dr. Marilyn B. Silver, Executive Director, Advisory Panel on the Dictionary of Occupational Titles, room N4470, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210, (202) 535-0161.

Signed at Washington, DC this 12th day of December, 1990.

Robert T. Jones,

Assistant Secretary for Employment and Training.

[FR Doc. 90-29980 Filed 12-21-90; 8:45 am]

BILLING CODE 4510-30-M

Mine Safety and Health Administration

[Docket No. M-90-191-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241, has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Osage No. 3 mine (I.D. No. 46-01455) located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use belt air to ventilate active working places.

3. In support of this request, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide detection system in all belt entries used as intake aircourses and to monitor the air at each belt drive and tailpiece. The warning time provided by the system would be maximized. The CO monitoring system would initiate the fire alarm signals at a surface location where a responsible person, having two-way communications with all working sections, would be located. This person would notify the working sections and other personnel who may be endangered when the permanently established alert and alarm levels are reached. The CO system would be capable of identifying any activated sensor.

4. The CO system would be visually examined at least once each shift and tested weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly. A record of all inspections would be maintained on the surface. The inspection record would show the time and date of each weekly inspection and monthly calibration.

5. If the CO monitoring system is deenergized, the belt conveyor would be allowed to continue operation and qualified persons would patrol and monitor the belt conveyor using handheld CO detecting devices. A CO detection device would also be available for use on each working

section in the event the monitoring system is deenergized or fails.

6. Petitioner states that the proposed alternate method will at all times guarantee no less than the same measure of protection as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 23, 1991. Copies of the petition are available for inspection at that address.

Dated: December 17, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-29988 Filed 12-21-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-188-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241, has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Blacksville No. 1 mine (I.D. No. 46-01867) located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use belt air to ventilate active working places.

3. In support of this request, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide detection system in all belt entries used as intake aircourses and to monitor the air at each belt drive and tailpiece. The warning time provided by the system would be maximized. The CO monitoring system would initiate the fire alarm signals at a surface location where a responsible person, having two-way communications with all working sections, would be located. This person would notify the working sections and other personnel who may be endangered when the permanently established alert and alarm levels are reached. The CO system would be capable of identifying any activated sensor.

4. The CO system would be visually examined at least once each shift and tested weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly. A record of all inspections would show the time and date of each weekly inspection and monthly calibration.

5. If the CO monitoring system is deenergized, the belt conveyor would be allowed to continue operation and qualified persons would patrol and monitor the belt conveyor using handheld CO detecting devices. A CO detection device would also be available for use on each working section in the event the monitoring system is deenergized or fails.

6. Petitioner states that the proposed alternate method will at all times guarantee no less than the same measure of protection as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 23, 1991. Copies of the petition are available for inspection at that address.

Dated: December 17, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-29989 Filed 12-21-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-187-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241, has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Arkwright No. 1 mine (I.D. No. 46-01452) located in Monongalia County, West Virginia. the petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use belt air to ventilate active working places.

3. In support of this request, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide detection system in all belt entries used as intake aircourses and to monitor the air at each belt drive and tailpiece. The warning time provided by the system would be maximized. The CO monitoring system would initiate the fire alarm signals at a surface location where a responsible person, having two-way communications with all working sections, would be located. This person would notify the working sections and other personnel who may be endangered when the permanently established alert and alarm levels are reached. The CO system would be capable of identifying any activated sensor.

4. The CO system would be visually examined at least once each shift and tested weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly. A record of all inspections would be maintained on the surface. The inspection record would show the time and date of each weekly inspection and monthly calibration.

5. If the CO monitoring system is deenergized, the belt conveyor would be allowed to continue operation and qualified persons would patrol and monitor the belt conveyor using handheld CO detecting devices. A CO detection device would also be available for use on each working section in the event the monitoring system is deenergized or fails.

6. Petitioner states that the proposed alternate method will at all times guarantee no less than the same measure of protection as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson

Boulevard, Arlington, Virginia 22203. All comment must be postmarked or received in that office on or before January 23, 1991. Copies of the petition are available for inspection at that address.

Dated: December 17, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-29990 Filed 12-21-90; 8:45 am]

BILLING CODE 4510-04-M

[Docket No. M-90-189-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241, has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Humphrey No. 7 mine (I.D. No. 46-01453) located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use belt air to ventilate active working places.

3. In support of this request, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide detection system in all belt entries used as intake aircourses and to monitor the air at each belt drive and tailpiece. The warning time provided by the system would be maximized. The CO monitoring system would initiate the fire alarm signals at a surface location where a responsible person, having two-way communications with all working sections, would be located. This person would notify the working sections and other personnel who may be endangered when the permanently established alert and alarm levels are reached. The CO system would be capable of identifying any activated sensor.

4. The CO system would be visually examined at least once each shift and tested weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly. A record of all inspections would be maintained on the surface. The inspection record would show the time and date of each weekly inspection and monthly calibration.

5. If the CO monitoring system is deenergized, the belt conveyor would be allowed to continue operation and qualified persons would patrol and monitor the belt conveyor using handheld CO detecting devices. A CO detection device would also be available for use on each working section in the event the monitoring system is deenergized or fails.

6. Petitioner states that the proposed alternate method will at all times guarantee no less than the same measure of protection as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 23, 1991. Copies of the petition are available for inspection at that address.

Dated: December 17, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-29991 Filed 12-21-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-190-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241, has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Loveridge No. 22 mine (I.D. No. 46-01433) located in Monongalia County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use belt air to ventilate active working places.

3. In support of this request, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide detection system in all belt entries used as intake aircourses and to monitor the air at each belt drive and tailpiece. The warning time provided by the system would be maximized. The CO monitoring system would initiate the fire alarm signals at a surface location where a responsible person, having two-way communications with all working sections, would be located. This person would notify the working sections and other personnel who may be endangered when the permanently established alert and alarm levels are reached. The CO system would be capable of identifying any activated sensor.

4. The CO system would be visually examined at least once each shift and tested weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly. A record of all inspections would be maintained on the surface. The inspection record would show the time and date of each weekly inspection and monthly calibration.

5. If the CO monitoring system is deenergized, the belt conveyor would be allowed to continue operation and qualified persons would patrol and monitor the belt conveyor using handheld CO detecting devices. A CO detection device would also be available for use on each working section in the event the monitoring system is deenergized or fails.

6. Petitioner states that the proposed alternate method will at all times guarantee no less than the same measure of protection as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 23, 1991. Copies of the petition are available for inspection at that address.

Dated: December 17, 1990.

Patricia W. Silver,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-29992 Filed 12-21-90; 8:45 am]

BILLING CODE 4510-43-M

[Docket No. M-90-192-C]

Consolidation Coal Co.; Petition for Modification of Application of Mandatory Safety Standard

Consolidation Coal Company, 1800 Washington Road, Pittsburgh, Pennsylvania 15241, has filed a petition to modify the application of 30 CFR 75.326 (aircourses and belt haulage entries) to its Robinson Run No. 95 mine (I.D. No. 46-01318) located in Marion County, West Virginia. The petition is filed under section 101(c) of the Federal Mine Safety and Health Act of 1977.

A summary of the petitioner's statements follows:

1. The petition concerns the requirement that intake and return aircourses be separated from belt haulage entries and that belt haulage entries not be used to ventilate active working places.

2. As an alternate method, petitioner proposes to use belt air to ventilate active working places.

3. In support of this request, petitioner proposes to install an early warning fire detection system utilizing a low-level carbon monoxide detection system in all belt entries used as intake aircourses and to monitor the air at each belt drive and tailpiece. The warning time provided by the system would be maximized. The CO monitoring system would initiate the fire alarm signals at a surface location where a responsible person, having two-way communications with all working sections, would be located. This person would notify the working sections and other personnel who may be endangered when the permanently established alert and alarm levels are reached. The CO system would be capable of identifying any activated sensor.

4. The CO system would be visually examined at least once each shift and tested weekly to ensure the monitoring system is functioning properly. The monitoring system would be calibrated with known concentrations of CO and air mixtures at least monthly. A record of all inspections would be maintained on the surface. The inspection record would show the time and date of each weekly inspection and monthly calibration.

5. If the CO monitoring system is deenergized, the belt conveyor would be allowed to continue operation and qualified persons would patrol and monitor the belt conveyor using handheld CO detecting devices. A CO detection device would also be available for use on each working section in the event the monitoring system is deenergized or fails.

6. Petitioner states that the proposed alternate method will at all times guarantee no less than the same measure of protection as that provided by the standard.

Request for Comments

Persons interested in this petition may furnish written comments. These comments must be filed with the Office of Standards, Regulations and Variances, Mine Safety and Health Administration, room 627, 4015 Wilson Boulevard, Arlington, Virginia 22203. All comments must be postmarked or received in that office on or before January 23, 1991. Copies of the petition are available for inspection at that address.

Dated: December 17, 1990.

Patricia W. Silvey,

Director, Office of Standards, Regulations and Variances.

[FR Doc. 90-29993 Filed 12-21-90; 8:45 am]

BILLING CODE 4510-43-M

Pension and Welfare Benefits Administration

[Prohibited Transaction Exemption 90-88; Exemption Application No. D-8487 et al.]

Grant of Individual Exemption; Citicorp, New York, NY, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Grant of individual exemptions.

SUMMARY: This document contains exemptions issued by the Department of Labor (the Department) from certain of the prohibited transaction restrictions of the Employee Retirement Income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Notices were published in the Federal Register of the pendency before the Department of proposals to grant such exemptions. The notices set forth a summary of facts and representations contained in each application for exemption and referred interested persons to the respective applications for a complete statement of the facts and representations. The applications have been available for public inspection at the Department in Washington, DC. The notices also invited interested persons to submit comments on the requested exemptions to the Department. In addition the notices stated that any interested person might submit a written request that a public hearing be held (where appropriate). The applicants have represented that they have complied with the requirements of the notification to interested persons. No public comments and no requests for a hearing, unless otherwise stated, were received by the Department.

The notices of pendency were issued and the exemptions are being granted solely by the Department because, effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type proposed to the Secretary of Labor.

Statutory Findings

In accordance with section 408(a) of the Act and/or section 4975(c)(2) of the code and the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975), and based upon the entire record, the Department makes the following findings:

(a) The exemptions are administratively feasible;

(b) They are in the interests of the plans and their participants and beneficiaries; and

(c) They are protective of the rights of the participants and beneficiaries of the plans.

Citicorp (Citicorp) Located in New York, New York

[Prohibited Transaction Exemption 90-88; Exemption Application No. D-8487]

Exemption

I. Transactions

A. Effective January 1, 1988, the restrictions of sections 406(a) and 407(a) of the Act and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c)(1) (A) through (D) of the code shall not apply to the following transactions involving trusts and certificates evidencing interests therein:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and an employee benefit plan when the sponsor, servicer, trustee or insurer of a trust, the underwriter of the certificates representing an interest in the trust, or an obligor is a party in interest with respect to such plan;

(2) The direct or indirect acquisition or disposition of certificates by a plan in

the secondary market for such certificates; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.A. (1) or (2).

Notwithstanding the foregoing, section I.A. does not provide an exemption from the restrictions of sections 406(a)(1)(E), 406(a)(2) and 407 for the acquisition or holding of a certificate on behalf of an Excluded Plan by any person who has discretionary authority or renders investment advice with respect to the assets of the Excluded Plan.[1]

B. Effective January 1, 1988, the restrictions of sections 406(b)(1) and 406(b)(2) of the Act and the taxes imposed by section 4975(a) and (b) of the Code by reason of section 4975(c)(1)(E) of the Code shall not apply to:

(1) The direct or indirect sale, exchange or transfer of certificates in the initial issuance of certificates between the sponsor or underwriter and a plan when the person who has discretionary authority or renders investment advice with respect to the investment of plan assets in the certificates is (a) an obligor with respect to 5 percent or less of the fair market value of obligations or receivables contained in the trust, or (b) an affiliate of a person described in (a); if:

(i) The plan is not an Excluded Plan;

(ii) Solely in the case of an acquisition of certificates in connection with the initial issuance of the certificates, at least 50 percent of each class of certificates in which plans have invested is acquired by persons independent of the members of the Restricted Group and at least 50 percent of the aggregate interest in the trust is acquired by persons independent of the Restricted Group;

(iii) a plan's investment in each class of certificates does not exceed 25 percent of all of the certificates of that class outstanding at the time of the acquisition; and

(iv) Immediately after the acquisition of the certificates, no more than 25 percent of the assets of a plan with respect to which the person has discretionary authority or renders investment advice are invested in certificates representing an interest in a trust containing assets sold or serviced by the same entity.[2] For purposes of this paragraph B.(1)(iv) only, an entity will not be considered to service assets contained in a trust if it is merely a subservicer of that trust;

(2) The direct or indirect acquisition or disposition of certificates by a plan in the secondary market for such certificates, provided that the conditions set forth in paragraphs B.(1) (i), (iii) and (iv) are met; and

(3) The continued holding of certificates acquired by a plan pursuant to subsection I.B. (1) or (2).

(C.) Effective January 1, 1988, the restrictions of sections 406(a), 406(b) and 407(a) of the Act, and the taxes imposed by section 4975 (a) and (b) of the Code by reason of section 4975(c) of the Code, shall not apply to transactions in connection with the servicing, management and operation of a trust; provided:

(1) Such transactions are carried out in accordance with the terms of a binding pooling and servicing arrangement; and

(2) The pooling and servicing agreement is provided to, or described in all material respects in the prospectus or private placement memorandum provided to, investing plans before they purchase certificates issued by the trust.[3]

Notwithstanding the foregoing, section I.C. does not provide an exemption from the restrictions of section 406(b) of the Act or from the taxes imposed by reason of section 4975(c) of the Code for the receipt of a fee by a servicer of the trust from a person other than the trustee or sponsor, unless such fee constitutes a "qualified administrative fee" as defined in section III.S.

D. Effective January 1, 1988, the restrictions of sections 406(a) and 407(a) of the Act, and the taxes imposed by sections 4975 (a) and (b) of the Code by reason of sections 4975(c)(1)(A) through (D) of the Code, shall not apply to any transactions to which those restrictions or taxes would otherwise apply merely because a person is deemed to be a party in interest or disqualified person (including a fiduciary) with respect to a plan by virtue of providing services to the plan (or by virtue of having a relationship to such service provider described in section 3(14) (F), (G), (H) or (I) of the Act or section 4975(e)(2) (F), (G), (H) or (I) of the Code), solely because of the plan's ownership of certificates.

II. General Conditions

A. The relief provided under part I is available only if the following conditions are met:

(1) The acquisition of certificates by a plan is on terms (including the certificate price) that are at least as favorable to the plan as they would be in an arm's length transaction with an unrelated party;

(2) The rights and interests evidenced by the certificates are not subordinated to the rights and interests evidenced by other certificates of the same trust;

(3) The certificates acquired by the plan have received a rating at the time of such acquisition that is in one of the three highest generic rating categories from either Standard & Poor's Corporation (S&P's), Moody's Investors Service, Inc. (Moody's), Duff & Phelps Inc. (D&P) or Fitch Investors Service, Inc. (Fitch);

(4) The trustee is not an affiliate of any member of the Restricted Group. However, the trustee shall not be considered to be an affiliate of a servicer solely because the trustee has succeeded to the rights and responsibilities of the servicer pursuant to the terms of a pooling and servicing agreement providing for such succession upon the occurrence of one or more events of default by the servicer;

(5) The sum of all payments made to and retained by the underwriters in connection with the distribution or placement of certificates represents not more than reasonable compensation for underwriting or placing the certificates; the sum of all payments made to and retained by the sponsor pursuant to the assignment of obligations (or interests therein) to the trust represents not more than the fair market value of such obligations (or interests); and the sum of all payments made to and retained by the servicer represents not more than reasonable compensation for the servicer's services under the pooling and servicing agreement and reimbursement of the servicer's reasonable expenses in connection therewith; and

(6) The plan investing in such certificates is an "accredited investor" as defined in Rule 501(a)(1) of Regulation D of the Securities and Exchange Commission under the Securities Act of 1933.

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[1] Section I.A. provides no relief from sections 406(a)(1)(E), 406(a)(2) and 407 for any person rendering investment advice to an Excluded Plan within the meaning of section 3(21)(A)(ii) and regulation 29 CFR 2510.3-21(c).

[2] For purposes of this exemption, each plan participating in a commingled fund (such as a bank collective trust fund or insurance company pooled separate account) shall be considered to own the same proportionate undivided interest in each asset of the commingled fund as its proportionate interest in the total assets of the commingled fund as calculated on the most recent preceding valuation date of the fund.

[3] In the case of a private placement memorandum, such memorandum must contain substantially the same information that would be disclosed in a prospectus if the offering of the certificates were made in a registered public offering under the Securities Act of 1933. In the Department's view, the private placement memorandum must contain sufficient information to permit plan fiduciaries to make informed investment decisions.

B. Neither any underwriter, sponsor, trustee, servicer, insurer, or any obligor, unless it or any of its affiliates has discretionary authority or renders investment advice with respect to the plan assets used by a plan to acquire certificates, shall be denied the relief provided under part I, if the provision of subsection II.A.(6) above is not satisfied with respect to acquisition or holding by a plan of such certificates, provided that (1) such condition is disclosed in the prospectus or private placement memorandum; and (2) in the case of a private placement of certificates, the trustee obtains a representation from each initial purchaser which is a plan that it is in compliance with such condition, and obtains a covenant from each initial purchaser to the effect that, so long as such initial purchaser (or any transferee of such initial purchaser's certificates) is required to obtain from its transferee a representation regarding compliance with the Securities Act of 1933, any such transferees will be required to make a written representation regarding compliance with the condition set forth in subsection II.A.(6) above.

III. Definitions

For purposes of this exemption:

A. *Certificate* means:

(1) A certificate

(a) That represents a beneficial ownership interest in the assets of a trust; and

(b) That entitles the holder to pass-through payments of principal, interest, and/or other payments made with respect to the assets of such trust; or

(2) A certificate denominated as a debt instrument—

(a) That represents an interest in a Real Estate Mortgage Investment Conduit (REMIC) within the meaning of section 860D(a) of the Internal Revenue Code of 1986; and

(b) That is issued by and is an obligation of a trust;

With respect to certificates defined in (1) and (2) for which Citicorp or any of its affiliates is either (i) the sole underwriter or the manager or co-manager of the underwriting syndicate, or (ii) a selling or placement agent. For purposes of this exemption, references to "certificates representing an interest in a trust" include certificates denominated as debt which are issued by a trust.

B. *Trust* means an investment pool, the corpus of which is held in trust and consists solely of:

(1) Either

(a) Secured consumer receivables that bear interest or are purchased at a discount (including, but not limited to, home equity loans and obligations secured by shares issued by a cooperative housing association);

(b) Secured credit instruments that bear interest or are purchased at a discount in transactions by or between business entities (including, but not limited to, qualified equipment notes secured by leases, as defined in section III.T;

(c) Obligations that bear interest or are purchased at a discount and which are secured by single-family residential, multi-family residential and commerical real property, (including obligations secured by leasehold interests on commercial real property);

(d) Obligations that bear interest or are purchased at a discount and which are secured by motor vehicles or equipment, or qualified motor vehicle leases (as defined in section III.U);

(e) *Guaranteed governmental mortgage pool certificates*, as defined in 29 CFR 2510.3–101(i)(2);

(f) Fractional undivided interests in any of the obligations described in clauses (a)–(e) of this section B.(1);

(2) Property which had secured any of the obligations described in subsection B.(1);

(3) Undistributed cash or temporary investments made therewith maturing no later than the next date on which distributions are to made to certificateholders; and

(4) Rights of the trustee under the pooling and servicing agreement, and rights under any insurance policies, third-party guarantees, contracts of suretyship and other credit support arrangements with respect to any obligations described in subsection B.(1).

Notwithstanding the foregoing, the term "trust" does not include any investment pool unless: (i) The investment pool consists only of assets of the type which have been included in other investment pools, (ii) certificates evidencing interests in such other investment pools have been rated in one of the three highest generic rating categories by S&P's, Moody's, D&P, or Fitch for at least one year prior to the plan's acquisition of certificates pursuant to this exemption, and (iii) certificates evidencing interests in such other investment pools have been purchased by investors other than plans for at least one year prior to the plan's acquisition of certificates pursuant to this exemption.

C. *Underwriter* means:

(1) Citicorp;

(2) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by or under common control with Citicorp; or

(3) Any member of an underwriting syndicate or selling group of which Citicorp or a person described in (2) is a manger or co-manager with respect to the certificates.

D. *Sponsor* means the entity that organizes a trust by depositing obligations therein in exchange for certificates.

E. *Master Servicer* means the entity that is a party to the pooling and servicing agreement relating to trust assets and is fully responsbile for servicing, directly or thorugh subservicers, the assets of the trust.

F. *Subservicer* means an entity which, under the supervision of and on behalf of the master servicer, services receivables contained in the trust, but is not a party to the pooling and servicing agreement.

G. *Servicer* means any entity which services receivables contained in the trust, including the master servicer and any subservicer.

H. *Trustee* means the trustee of the trust, and in the case of certificates which are denominated as debt instruments, also means the trustee of the indenture trust.

I. *Insurer* means the insurer or guarantor of, or provider of other credit support for, a trust.

Notwithstanding the foregoing, a person is not an insurer solely because it holds securities representing an interest in a trust which are of a class subordinated to certificates representing an interest in the same trust.

J. *Obligor* means any person, other than the insurer, that is obligated to make payments with respect to any obligation or receivable included in the trust. Where a trust contains qualified motor vehicle leases or qualified equipment notes secured by leases, "obligor" shall also include any owner of property subject to any lease included in the trust, or subject to any lease securing an obligation included in the trust.

K. *Excluded Plan* means any plan with respect to which any member of the Restricted Group is a "plan sponsor" within the meaning of section 3(16)(B) of the Act.

L. *Restricted Group* with respect to a class of certificates means:

(1) Each underwriter;

(2) Each insurer;

(3) The sponsor;

(4) The trustee;

(5) Each servicer;

(6) Any obligor with respect to obligations or receivables included in the trust constituting more than 5 percent of the aggregate unamortized principal balance of the assets in the

trust, determined on the date of the initial issuance of certificates by the trust; or

(7) Any affiliate of a person described in (1)–(6) above.

M. *Affiliate* of another person includes:

(1) Any person directly or indirectly, through one or more intermediaries, controlling, controlled by, or under common control with such other person.

(2) Any officer, director, partner, employee, relative (as defined in section 3(15) of the Act), a brother, a sister, or a spouse of a brother or sister of such other person; and

(3) Any corporation or partnership of which such other person is an officer, director or partner.

N. *Control* means the power to exercise a controlling influence over the management or policies of a person other than an individual.

O. A person will be "independent" of another person only if:

(1) Such person is not an affiliate of that other person; and

(2) The other person, or an affiliate thereof, is not a fiduciary who has investment management authority or renders investment advice with respect to any assets of such person.

P. *Sale* includes the entrance into a forward delivery commitment (as defined in section Q below), provided:

(1) The terms of the forward delivery commitment (including any fee paid to the investing plan) are no less favorable to the plan than they would be in an arm's length transaction with an unrelated party;

(2) The prospectus or private placement memorandum is provided to an investing plan prior to the time the plan enters into the forward delivery commitment; and

(3) At the time of the delivery, all conditions of this exemption applicable to sales are met.

Q. *Forward delivery commitment* means a contract for the purchase or sale of one or more certificates to be delivered at an agreed future settlement date. The term includes both mandatory contracts (which contemplate obligatory delivery and acceptance of the certificates) and optional contracts (which give one party the right but not the obligation to deliver certificates to, or demand delivery of certificates from, the other party).

R. *Reasonable compensation* has the same meaning as that term is defined in 29 CFR 2550.408c–2.

S. *Qualified Administrative Fee* means a fee which meets the following criteria:

(1) The fee is triggered by an act or failure to act by the obligor other than the normal timely payment of amounts owing in respect of the obligations;

(2) The servicer may not charge the fee absent the act or failure to act referred to in (1);

(3) The ability to charge the fee, the circumstances in which the fee may be charged, and an explanation of how the fee is calculated are set forth in the pooling and servicing agreement; and

(4) The amount paid to investors in the trust will not be reduced by the amount of any such fee waived by the servicer.

T. *Qualified Equipment Note Secured By A Lease* means an equipment note:

(a) Which is secured by equipment which is leased;

(b) Which is secured by the obligation of the lessee to pay rent under the equipment lease; and

(c) With respect to which the trust's security interest in the equipment is at least as protective of the rights of the trust as the trust would have if the equipment note were secured only by the equipment and not the lease.

U. *Qualified Motor Vehicle Lease* means a lease of a motor vehicle where:

(a) The trust holds a security interest in the lease;

(b) The trust holds a security interest in the leased motor vehicle; and

(c) The trust's security interest in the leased motor vehicle is at least as protective of the trust's rights as the trust would receive under a motor vehicle installment loan contract.

V. *Pooling and Servicing Agreement* means the agreement or agreements among a sponsor, a servicer and the trustee establishing a trust. In the case of certificates which are denominated as debt instruments, "Pooling and Servicing Agreement" also includes the indenture entered into by the trustee of the trust issuing such certificates and the indenture trustee.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on October 30, 1990 at 55 FR 45683.

WRITTEN COMMENTS: The Department received one written comment on the notice of proposed exemption and no requests for a public hearing. The written comment, which was submitted by Citicorp, requested certain changes in the notice of proposed exemption. The specific details of the comment are as follows:

1. In the first sentence of section II.A. at page 45684, the work "provider" should be deleted and replaced by the word "provided".

2. In the first sentence of Item 1 at page 45686, the definition "(CSMI)" should be inserted after the phrase "Citicorp Securities Markets, Inc., a registered broker-dealer".

3. In footnote 6 of the Notice of proposed exemption at 45686, the sentence reading "However, Citicorp has stated that it may avail itself of the exemptive relief provided by PTE 83-1" should be added at the end of the footnote.

After consideration of the entire record, including the comment submitted by Citicorp, the Department has determined to grant the exemption.

EFFECTIVE DATE: This exemption is effective for transactions occurring on or after January 1, 1988.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Valco Instruments, Inc. Profit Sharing Plan Trust (the Plan) Located in Houston, Texas

[Prohibited Transaction Exemption 90–89; Exemption Application No. D–8095]

Exemption

The restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The purchase by the Plan of a 50% joint venture interest (the Interest) in the Springfield Partnership (the Springfield Partnership) from Property Redevelopment Corporation II (PRC II), a party in interest with respect to the Plan, for the lesser of $355,000 or the fair market value of the interest (the Acquisition Cost) in the Springfield Partnership at the time of the purchase); and (2) any future sale of the Plan's Interest in the Springfield Partnership pursuant to an option agreement (the Option Agreement) whereby the Plan at the sole discretion of an indepedent fiduciary, will be able to sell the interest to Valco Instruments, Inc. (the Employer) or Stanley D. Stearns (Mr. Stearns), the owner of 95% and 100% of the Employer and PRC II, respectively; provided the following conditions are satisfied:

(1) The purchase of the Interest will be a one-time cash transaction and the Plan will pay no expenses with regard to the purchase;

(2) The total investment of the Plan, including the Acquisition Cost and the aggregate amount of the principal balance of outstanding loans extended by the Plan to the Springfield Partnership and the outstanding principal amount of loans for which the Plan will provide assurances, will not

exceed at any given time 25% of the Plan's total assets;

(3) The fair market value of the Interest will be determined by an independent qualified appraiser at the time of the purchase;

(4) The Empoyer and Mr. Stearns agree via the Option Agreement to repurchase the interest from the Plan at the sole discretion of the independent fiduciary at any time that the independent ficuciary determines that the Plan's involvement in the Springfield Partnership is no longer in the Plan's interest. The sale price will be the greater of the fair market value of the Interest as determined by an independent qualified appraiser at the time of the sale or the total amount invested in or advanced by the Plan to the Springfield Partnership plus an amount equal to the rate of return earned by other Plan investments, from the initial date of the Plan's participation until the date the optioin is exercised;

(5) The independent fiduciary has represented that the transactions are in the best interest and protective of the Plan; and

(6) The independent fiduciary is independent of other parties involved in the transaction and the fees received by the independent fiduciary for serving in the independent fiduciary capacity combined with any other fees derived from the Employer or other related parties will not exceed 1% of his gross annual income for each fiscal year that he continues to serve in the independent fiduciary capacity with respect to the transactions described herein.

For a more complete statement of the facts and representations supporting the Department's decision to grant this exemption refer to the notice of proposed exemption published on September 21, 1990 at 55 FR 38878/38880.

WRITTEN COMMENTS: The Department received one anonymous comment letter with respect to the notice of proposed exemption from a group of interested persons with respect to the Plan (the Commenters). The Commenters oppose the Department granting the exemption for several reasons. The Commenters state while a retirment home has been constructed on property owned by the Springfield Partnership, the retirement home has not been financially successful since it began its operations. The Commenters are also opposed to the Plan's investment in the Springfield Partnerhsip because the Plan would be acquiring a joint venture interest which, under Texas law, is a general partnership interest that will expose the Plan to unlimited liability. Finally, the Commenters maintain that the Option Agreement, whereby the Plan through a determination by an independent fiduciary could at any time sell the Interest to either the Employer or Mr. Stearns, is not sufficient protection because it lacks collateral that would secure the Employer's and Mr. Stearn's obligation to repurchase the Interest from the Plan.

The applicant responded to the comments by letter dated November 26, 1990. The applicant stated that the construction of the retirement home was completed in August, 1990. As such, because the retirement home only began its operations in August, 1990, it has not yet reached the projected levels of income or expense. Additionally, the applicant maintains that the Option Agreement, which will be exercised at the sole discretion of the independent fiduciary, will be protective of the Plan in the event that the participation in the Springfield Partnership ceases to be in the Plan's best interest. The applicant states further that the Commenter's concerns regarding the Option Agreement are unfounded because the Employer and Mr. Stearns have sufficient financial resources to purchase the Interest from the Plan in the event the Option Agreement is exercised.

The Department also notes that a non-recourse loan (the Loan) to the Springfield Partnership has been made by the Department of Housing and Urban Development. This Loan has provided approximately 90% of the total construction cost of the retirement home. After careful consideration of the entire record, the Department has determined to grant the exemption.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523-8194. (This is a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) These exemptions are supplemental to and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transactional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(3) The availability of these exemptions is subject to the express condition that the material facts and representations contained in each application accurately describes all material terms of the transaction which is subject to the exemption.

Signed at Washington, DC, this 19th day of December, 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90-30090 Filed 12-21-90; 8:45 am]

BILLING CODE 4510-29-M

[Application No. L-8461, et al.]

Proposed Exemptions; Hotel Employees and Restaurant Employees International Union Welfare Plan and Fund, et al.

AGENCY: Pension and Welfare Benefits Administration, Labor.

ACTION: Notice of proposed exemptions.

SUMMARY: This document contains notices of pendency before the Department of Labor (the Department) of proposed exemptions from certain of the prohibited transaction restriction of the Employee Retirement income Security Act of 1974 (the Act) and/or the Internal Revenue Code of 1986 (the Code).

Written Comments and Hearing Requests

All interested persons are invited to submit written comments or request for a hearing on the pending exemptions, unless otherwise stated in the Notice of Pendency, within 45 days from the date of publication of this **Federal Register** Notice. Comments and request for a hearing should state the reasons for the writer's interest in pending exemption.

ADDRESSES: All written comments and request for a hearing (at least three

copies) should be sent to the Pension and Welfare Benefits Administration, Office of Exemption Determinations, room N–5671, U.S. Department of Labor, 200 Constitution Avenue, NW., Washington, DC 20210. Attention: Application No. stated in each Notice of Pendency. The applications for exemption and the comments received will be available for public inspection in the Public Documents Room of Pension and Welfare Benefits Administration, U.S. Department of Labor, room N–5507, 200 Constitution Avenue, NW., Washington, DC 20210.

Notice to Interested Persons

Notice of the proposed exemptions will be provided to all interested persons in the manner agreed upon by the applicant and the Department within 15 days of the date of publication in the **Federal Register**. Such notice shall include a copy of the notice of pendency of the exemption as published in the **Federal Register** and shall inform interested persons of their right to comment and to request a hearing (where appropriate).

SUPPLEMENTARY INFORMATION: The proposed exemptions were requested in applications filed pursuant to section 408(a) of the Act and/or section 4975(c)(2) of the Code, and in accordance with procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). Effective December 31, 1978, section 102 of Reorganization Plan No. 4 of 1978 (43 FR 47713, October 17, 1978) transferred the authority of the Secretary of the Treasury to issue exemptions of the type requested to the Secretary of Labor. Therefore, these notices of pendency are issued solely by the Department.

The applications contain representations with regard to the proposed exemptions which are summarized below. Interested persons are referred to the applications on file with the Department for a complete statement of the facts and representations.

Hotel Employees and Restaurant Employees International Union Welfare Plan and Fund (the Plan) Located in Las Vegas, Nevada

[Application No. L–8461]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of section 406(a) of the Act shall not apply to (1) the past and proposed lease by the Plan of office space in certain commercial real property (the Property) located in Las Vegas, Nevada to Southwest Therapy, Inc., a party in interest with respect to the Plan (the STI Lease); and (2) the subsequent leases of space in the Property, including amendments, renewals or extensions thereof, by the Plan to other parties in interest with respect to the Plan; provided that such Property leases are with parties which do not have any fiduciary authority with respect to the Plan's interests in the Property; and provided further that all terms and conditions of such leases, including amendments, renewals or extensions thereof, are no less favorable to the Plan than those which the Plan could obtain in arm's-length transactions with unrelated parties.

EFFECTIVE DATE: This exemption, if granted, will be effective as of July 16, 1990 with respect to the STI Lease.

Summary of Facts and Representations

1. The Plan is a multiemployer welfare plan providing health and welfare benefits for members of the Hotel Employees and Restaurant Employees International Union (the Union). As of May 31, 1990 the Plan approximately 89,000 participants and assets of approximately $51,400,000. The Plan is administered in seven locations, including Las Vegas, Nevada where the Plan contracts with the American Benefit Plan Administrators, Inc. (the ABPA) to administer Plan benefits. The ABPA also administers Plan benefits at the Plan's Pasadena and San Beranadino, California locations. The Plan's relationship with the ABPA, including the retention of subcontractors and service providers with respect to Plan benefits, are subject to binding recommendations to the Trustees by an independent fiduciary, Martin E. Segal Company (Segal), pursuant to the terms of two consent decrees (the Decrees) to which the Department is a party. The Decrees resolve litigation involving allegations of past breaches of fiduciary duties to the Plan by persons unrelated to ABPA and no longer associated with the Plan.[1]

2. The ABPA has operated Plan administration functions in the Plan's Las Vegas location in office space provided by the Plan in facilities which the Plan has leased from unrelated parties since April 1987. Prior to the expiration of this lease arrangement, during the early part of 1989 the Trustees asked Segal for advice with respect to the Plan's upcoming needs for office space. The Trustees represent that the alternatives analyzed by Segal at their request included renewal of the existing lease, the lease of space in a different building and the purchase or construction of different space. After consideration of the findings and recommendations of Segal resulting from this analysis, the Trustees decided to proceed with negotiations for the purchase of the Property, a commercial office and retail property located at 1917 Las Vegas Boulevard in Las Vegas, and known as the St. Louis Square Shopping Center. At the direction of the Trustees, Segal supervised negotiations and on May 11, 1990 a purchase agreement (the Contract) was executed between the Property owner, which is unrelated to the Plan, and the Plan's executive director. The Contract established a purchase price of $4,750,000 for the Property. Subsequently, during the 45-day examination period under the Contract, the Property was appraised with a fair market value of $5,280,000 by the valuation services division of Laventhal and Horwath, Certified Public Accountants, in Las Vegas, Nevada. The Contract was closed and the Plan acquired the Property on July 16, 1990. The Trustees established a wholly-owned subsidiary of the Plan, St. Louis Square, Inc. (the Property Corp.), a nonprofit Nevada corporation, exclusively for the purpose of owning the Property on behalf of the Plan. The Property Corp. has two directors, John E. Cullerton, a consultant for the Plan, and Robert J. Kuchler, the Plan's executive director, each of whom (the Directors) is appointed by the Trustees.

3. It is intended that ABPA's operations on behalf of the Plan will occupy approximately 10,000 to 12,000 of the Property's approximately 43,000 square feet and that the remainder will be leased to other parties. The Trustees represent that during the examination period under the Contract it was discovered that a service provider with respect to the Plan, Southwest Therapy, Inc. (STI), is a tenant in the Property. STI is the exclusive provider of occupational therapy benefits under the Plan to participants in the Las Vegas area. STI occupies office space in the Property under the STI Lease, a written lease negotiated and executed with the Property's previous owner prior to the consideration of the Property by Segal for purchase by the Plan. Another tenant in the Property, Prescriptions Plus, Inc. (PPI), curently unrelated to the Plan, being considered by the Trustees and Segal as a prospective pharmacy service

[1] In this regard, see Proposed Exemption for Application No. L–7754, 54 FR 45824, October 31, 1989, granted as Prohibited Transaction Exemption 89–114, 45 FR 53400, December 28, 1989.

provider to the Plan, due to mutual interest in a preferred provider contract between PPI and the Plan and the close proximity of PPI's facilities in the Property to the administrative offices of the Plan. PPI also negotiated and executed its written lease (the PPI Lease) with the Propety's previous owner to the Trustee's interest in purchasing the Property for the Plan. In addition to STI and PPI, the Trustees anticipate that it may be in the best interests of the Plan for other service providers to be located in the Property. An exemption is requested for the past and proposed STI Lease and for proposed future leases of space in the Property by the Plan to plan service providers under the terms and conditions described herein.

4. The STI Lease is a three-year lease under which STI leases 4,128 square feet at a base rent of $1.30 per square foot per month. STI executed the STI Lease with First Interstate Bank of Nevada, the Property's previous owner from which the Trustees purchased the Property. The Trustees represent that they approved the purchase of the Property with knowledge of the STI Lease and the prohibited transaction which it would constitute after the Plan's purchase of the Property, and that they based their approval of the purchase on factors which included the following: (1) They determined that the Property is well suited and appropriately priced for the Plan's needs; (2) Abandoning the purchase at the point of discovering the STI Lease would have resulted in a loss of the money and time spent toward negotiating the Property's purchase and would have involved an expense of additional money and time in locating and securing an alternative property; (3) The Trustees determined, with the assistance of professional real estate brokers, that the STI Lease is an arm's-length commercial lease which provides for fair market rentals; and (4) The Trustees decided that it would be advantageous for the Plan to own its own office space in a property which could provide income and offer Plan service providers a central location within close proximity to the Plan's offices.

5. Under an agreement with the Directors, Terra West Realty and Development, Inc. (Terra West), a commercial real property leasing and management company in Las Vegas, serves as manager and leasing agent for the Property. Terra West represents that it is independent of and unrelated to STI and PPI and that it will be unrelated to all parties in interest with respect to the Plan which may lease space in the Property under this exemption. Terra West is authorized by the Directors as the Property Corp.'s exclusive agent in the oversight and enforcement of all Property leases and the negotiation of all new leases, renewals and modifications. Under its agreement with the Directors, Terra West is required to notify the Directors of all prospective new leases, including amendments, renewals and extensions. Terra West represents that it has examined the STI Lease and the PPI Lease and has determined their terms, including rental rates, length and maintenance provisions, are consistent with arm's-length provisions which are standard in the commercial real property market in which the Property is situated. Terra West represents that all prospective tenants in the Property will be dealt with at arm's length and that all leases, including amendments, renewals and extensions, will reflect common industry practices and will provide for rentals of no less than the fair market rental value of the demised premises. Terra West confirms that no space in the Property will be leased to any party which has any fiduciary authority with respect to the Plan's interests in the Property.

6. In summary, the applicants represent that the past and proposed transactions satisfy the criteria of section 408(a) of the Act for the following reasons: (1) the STI Lease, which the Trustees found to be a standard commercial lease, was executed at arm's-length before the Plan acquired any interest in the Property and provides rentals which the Trustees determined to be fair market rental rates; (2) The Trustees determined that the PPI Lease is a standard commercial lease negotiated and executed at arm's length before the Plan's acquisition of any interest in the Property and the Trustees found that it provides fair market rentals; (3) The Plan's interests with respect to the STI Lease, the PPI Lease and all future leases of space in the Property are and will be represented by Terra West, an independent property management and leasing company which is the agent of the Directors, who are appointed by the Trustees; (4) No leases of the Property will be entered into with any party which has any fiduciary authority with respect to the Plan's interests in the Property; and (5) Terra West will ensure that all leases of the Property, including amendments, renewals and extensions, will be standard commercial transactions which provide no less than fair market rentals.

FOR FURTHER INFORMATION CONTACT: Ronald Willett of the Department (202) 523-8881. (This is not a toll-free number.)

Marion Laboratories, Inc. Master Profit Sharing Plan (the PS Plan) and Marion Laboratories, Inc. Associate Stock Ownership Plan (the ASOP; together the Plans) Located in Kansas City, Missouri

[Application Nos. D-8227 and D-8228]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75-1 (40 FR 18471, April 28, 1975). If the exemption is granted the restrictions of sections 406(a), 406 (b)(1) and (b)(2) and 407(a) of the Act and the sanctions resulting from the application of section 4975 of the Code, by reason of section 4975(c)(1) (A) through (E) of the Code, shall not apply to: (1) The acquisition by the Plans of certain contingent value rights (the CVRs) as a result of their ownership of common stock in Marian Laboratories, Inc. (Marion) on December 2, 1989, provided the terms of the CVRs are not less favorable to the Plans that the terms of CVRs issued to other parties in connection with the transaction; and (2) the continued holding of the CVRs by the PS Plan.

EFFECTIVE DATE: If the proposed exemption is granted, it will be effective December 2, 1989.

Summary of Facts and Representations

1. Marion is a Delaware corporation with its principal executive offices in Kansas City, Missouri. As of September 15, 1989, there were 150,488,185 shares of Marion common stock issued and outstanding and 493,467 shares held in the Marion treasury. Marion is engaged in the development, manufacture and sale of pharmaceuticals and products for hospital use.

2. The PS Plan is a defined contribution plan with 3,183 participants as of September 30, 1989. The PS Plan holds shares of common stock in Marion. As of June 30, 1989, the aggregate fair market value of the total assets of the PS Plan was $239,185,830, of which $156,302,472 consisted of marion stock (6,651,169 shares). As of September 30, 1989, the PS Plan had total assets of approximately $331,360,000, approximately $122,749,000 of which consisted of Marion stock (3,610,265 shares). The ASOP is a defined contribution employee stock ownership plan with 1,893 participants as of September 30, 1989. The ASOP was designed to invest primarily in Marion

stock. As of June 30, 1989, the ASOP had total assets of approximately $8,413,113, of which approximately $8,286,015 consisted of Marion stock (328,159 shares). As of November 30, 1989, approximately $11,522,225 of the ASOP's $12,067,500 total assets was invested in Marion stock (322,300 shares).

3. On July 17, 1989, Marion entered into a stock acquisition agreement (the Agreement) with Dow and its wholly owned subsidiary, RH Acquisition Corp. (RHA). The Agreement provided for the acquisition by Dow of approximately 67% of the outstanding shares of Marion common stock in a two-step transaction. The terms of the acquisition were negotiated on an arm's-length basis between Marion and Dow and RHA. Marion shares were trading at $25.25 per share on the New York Stock Exchange on July 14, 1989, the last day prior to public announcement of the acquisition discussions.

4. As the first step of the transaction, Dow (through RHA) commenced a tender offer (the Offer) on July 21, 1989 for 58,500,000 (or approximately 38.9%) of the outstanding shares of Marion common stock at a price of $38 per share in cash. The offer was successful, and upon expiration of the Offer on August 24, 1989, a total of 135,641,685 shares (representing approximately 90.1% of the then outstanding shares) were validly tendered and not withdrawn.[2] Of this number, 58,500,000 shares were purchased by RHA on a pro rata basis at a price of $38 per share in cash. Thus, about 43.1% of the tendered shares were purchased pursuant to the Offer (38.9% of the shares then outstanding). In the second step, Marion issued to Dow 127,600,000 hew shares of Marion common stock in exchange for all the outstanding shares of common stock of Merrell Dow Pharmaceuticals, Inc., a wholly-owned subsidiary of Dow, and a number of CVRs equal to the number of outstanding share of Marion common stock then held by persons other than Dow and its subsidiaries.

5. Pursuant to a stock option agreement dated July 17, 1989, between Dow and Ewing M. Kauffman, Muriel Kauffman and the trustees of two trusts unrelated to the Plans (the Principal Stockholders), the Principal Stockholders (a) granted to Dow irrevocable options to purchase under certain circumstances the Marion shares owned by the Principal Stockholders at a price per share equal to the price per share paid pursuant to the offer; (b) agreed to tender all their shares pursuant to the Offer; and (c) irrevocably appointed Dow to act as proxy in respect to the shares held by the Principal stockholders and not purchased pursuant to the Offer. The Principal Stockholders held in the aggregate 34,508,951 shares representing approximately 22.9% of the issued and outstanding shares of Marion as of July 14, 1989.

6. Shares of Marion common stock not purchased pursuant to the Offer remained outstanding after completion of the two-step transaction. Marion distributed to each holder of such shares, other than Dow and its subsidiaries, one CVR for each share of common stock held by such shareholder on the record date, which was December 2, 1989.

7. The CVRs are a new class of Dow publicly-traded securities that are sold separately from Dow common stock. The CVRs were issued under a CVR agreement between Dow and Ameritrust Company, N.A. as CVR trustee. The CVRs are listed on the American Stock Exchange. The maturity date of the CVRs is September 30, 1991 unless Dow, in its sole discretion, extends the maturity date to September 30, 1992. At maturity the CVR will pay the difference, if any, between $45.77 ($50.23 if extended to September 30, 1992) and the greater of 1) the fair market value of Marion stock or 2) $30. No interest is paid on a CVR except in the case of default by Dow.

8. Prior to the expiration date of the Offer, Shearson Lehman Hutton, Inc., (Shearson), an investment banking firm, rendered an opinion to the Marion Board of Directors that the consideration to be received in the acquisiton by the Marion shareholders, except the Principal Stockholders, was fair from a financial point of view. The Marion Board of Directors unanimously voted that the stock acquisition was fair and in the best interests of the stockholder, and recommended that the shareholders tender their shares. (As stated in 4 above, approximately 90.1% of the outstanding shares were tendered.)

9. Prior to the expiration date of the Offer, the Plans retained George K. Baum & Company (Baum), an investment banking firm, to render an opinion as to the fairness of the transaction. Baum rendered an opinion to the trustees that: (1) The consideration to be received for shares tendered ($38) was fair to the participants; and (2) the aggregate fair market value of one Marion share and a CVR was not materially different, from a financial point of view, than the consideration to be received for tendered shares ($38).

10. The PS Plan provides each of its participants with three different investment options. Each participant may elect, once each month, to invest or reinvest his account in the Equity Fund, an equity fund; the Security Fund, a fixed-income fund; or the Marion Fund, which is invested solely in Marion stock, except that the Plan Administrator may maintain as much of the Marion Fund in cash or short-term investments as necessary to meet the Fund's cash requirements. The election by the Plan participant normally must be made by the 20th of the month. Given the unique timing of the tender offer, PS Plan participants were allowed until August 31 to make the August election. Although the decision to tender the shares held by the Marion Fund was made by the trustees, the Marion Fund participants were given the decision whether to reinvest the proceeds of the tendered shares in the Marion Fund, or to transfer the proceeds to either of the other Funds maintained by the PS Plan. No CVRs were received by either the Security Fund or the Equity Fund because neither holds any Marion shares.

11. On August 24, 1989, the trustees of the PS Plan tendered 100% of the Marion shares held by the Plan, and 43.1% of the tendered shares were accepted by Dow. (Dow accepted on a pro-rata basis 43.1% of all shares tendered by Marion shareholders, see 4, above.) Consequently, the PS Plan continued, immediately after the completion of the Offer, to hold 3,610,265 shares. According to the terms of the Agreement, the PS Plan was entitled to receive on the record date, December 2, 1989, one CVR for each Marion share held on that date. The PS Plan may continue to hold the CVRs it acquired on December 2, 1989, but may not, according to the Plan Document, acquire additional CVRs.

12. Unlike participants in the PS Plan, participants in the ASOP do not have the option to decide how their accounts in the ASOP are to be invested. The trustees of the ASOP have the duty to determine, consistent with the terms of the Plan Document, how the assets of the Plan will be invested. The decision whether to tender the Marion shares was likewise within the discretion of the ASOP's trustees, who tendered 100% of the Marion shares held by the ASOP, on August 24, 1989. Dow accepted 43.1% of the shares tendered by the ASOP. Consequently, the ASOP continued to hold 185,486 Marion shares. Additionally, approximately $5,007,500,

[2] The applicant notes that the Offer would have been successful even if the Plans had not tendered any of their shares.

representing proceeds for the Offer, had to be reinvested by the ASOP in Marion common stock before the record date for receiving CVRs.[3] This reinvestment was required under the rules for tax credit employee stock ownership plans provided in section 409(d) of the Code.[4] According to the terms of the Agreement, the ASOP received one CVR for every Marion share it held on the record date, December 2, 1989.

13. The applicant represents that the only way for the Plans to have avoided obtaining the CVRs would have been for them to sell the Plans' shares prior to the record date, December 2, 1989, and then to repurchase Marion shares after that date. The applicant represents that placing such a large number of Marion shares on the market could have had a substantial impact on the price received by the Plans for the shares. Mr. Frederick Frank, Senior Managing Director of Shearson, has represented that a trade of such volume would most likely have been accomplished at a two to three point discount to the trading range of the Marion common stock of $34–$36 in the last two weeks of November 1989, which trading range reflected two components: (1) The estimated value of the common stock of Marion (now, Marion Merrell Dow, Inc. (MMD)) following the close of the merger of Marion with Merrell Dow Pharmaceuticals, Inc.; and (2) the estimated value of the CVR to be distributed on December 2, 1989. The average price of the shares in the first four weeks of trading of MMD shares after the consummation of the stock acquisition transaction (December 11, 1989, through January 5, 1990), was approximately $26.50, and during the same four-week period, the CVR traded at an average level of approximately $8.375. Consequently, Mr. Frank represents that the trustees would have sold Marion shares for a price in the range of, in his judgment, $31–$34, while the package of one share of common stock and one CVR traded in a range of approximately $34–$35. Furthermore, Mr. Frank represents that the subsequent repurchase of such a large volume of shares by the trustees would have required a premium over the then trading price of such shares. The applicant also estimates that the brokerage fees to the Plans from such a sale and subsequent repurchase of shares would have been approximately $380,000.

14. As stated above, the participants in the PS Plan have the authority to elect whether to have any portion of their account balance under the Plan invested in its Marion Fund, which holds MMD common stock, CVRs and cash; the other alternatives are the Equity Fund and the Security Fund (see Rep. 10, above). Those who were participants in the Marion Fund on December 2, 1989 have been able to decide monthly whether to have some or all of the CVRs credited to their Marion Fund accounts sold, with the proceeds reinvested in the Security Fund, the Equity Fund, or both. As of May 7, 1990, 369 PS Plan participants had elected to have 677,762 CVRs sold, representing approximately 24% of the CVRs that were distributed to the PS Plan on December 2, 1989. The ASOP no longer holds any of the CVRs which it acquired on December 2, 1989. Disposition of the CVRs by the ASOP was completed on February 22, 1990.[5] The bulk of the CVRs (253,000) were sold by the ASOP in a block sale to an unrelated third party on February 21, 1990. The applicant represents that the market price of the CVRs was not noticeably affected by the sale. The balance of the ASOP's CVRs were sold on the market.

15. On May 16, 1990, Janus Capital Corporation (Janus) became the independent fiduciary for the PS Plan with respect to the PS Plan's investment in the CVRs. Janus, which currently has approximately 1.6 billion dollars in assets under active management, has served as investment manager of a portion of the PS Plan's portfolio since 1986.

Since May 16, 1990, Janus has been empowered to make the decision on behalf of the PS Plan as to whether to retain the CVRs or to sell them. Janus is also authorized to enforce any and all applicable rights with respect to the CVRs in whatever manner Janus deems appropriate. The participants of the PS Plan still retain their authority to direct the sale of CVRs held in their own accounts. In the absence of such affirmative direction by a PS Plan participant, Janus will have total authority over the Plan's decision to retain or sell any of the CVRs.

16. In summary, the applicant represents that the subject transactions have met the criteria of section 408(a) of the Act because: (1) An independent investment banking firm, Baum, rendered an opinion to the Plans prior to the expiration of the Offer that the consideration for tendered Marion shares was fair, and that the aggregate fair market value of one Marion share and one CVR was not materially different from the price to be received for the tendered shares; (2) an independent investment banking firm, Shearson, has represented that had the Plans sold and repurchased the Marion shares, which was the only way the Plans would not have received the CVRs, the sale would have been at a two to three point discount, and the Plans would have had to pay a premium to reacquire the shares; (3) the Plans would have had to pay sales commissions estimated at $380,000 had they sold and repurchased the shares; (4) the PS Plan participants had the authority to transfer their investments out of the Marion Fund prior to the receipt by the Plan of the CVRs; (5) the PS Plan participants continue to have the authority to direct the sale of CVRs held in their own accounts; and (6) an independent fiduciary, Janus, has been appointed to have authority over the decision by the PS Plan as to whether to hold or sell the CVRs in the absence of affirmative direction by a PS Plan participant to sell the CVRs in his or her account.

FOR FURTHER INFORMATION CONTACT: Gary H. Lefkowitz of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

Amended and Restated Aero Cast Inc., Profit Sharing Plan (the Plan) Located in Miami, Florida

[Application No. D–8421]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of sections 406(a), 406(b)(1) and (b)(2) of the Act and the sanctions resulting from the application of sections 4975(c)(1)(A) through (E) of the Code, shall not apply

[3] The Department notes that section 404(a)(1) of the Act requires, among other things, that a fiduciary of a plan must act prudently, solely in the interest of the plan's participants and beneficiaries, and for the exclusive purpose of providing benefits to participants and beneficiaries when making investment decisions on behalf of a plan. In order to act prudently in making investment decisions, the fiduciary must consider, among other factors, the availability, risks and potential return of alternative investments for the plan.

In this proposed exemption, the Department expresses no opinion as to whether the decision by the ASOP's fiduciaries to reinvest the proceeds of the Offer in Marion common stock satisfied the requirements of section 404 of the Act.

[4] The applicant also cites Treasury Regulation § 1.46–8 and Internal Revenue Service General Counsel Memorandum 39060 (March 15, 1983) as the basis for requiring the reinvestment by the ASOP in Marion common stock.

[5] In this notice, the Department is proposing no exemptive relief for the holding by the ASOP of the CVRs for the period prior to their disposition.

to the proposed sale by the Plan of certain units of ownership interest in two limited partnerships (collectively, the Units) to David F. Janney (Mr. Janney), a party in interest with respect to the Plan, provided that the Plan receives the greater of $75,274 and $62,793 for the Units in each of the respective partnerships or the fair market value of the Units at the time of the sale.

Summary of Facts and Representations

1. The Plan, established on June 1, 1970, is a profit sharing plan with 150 participants which, as of March 31, 1990, had $743,773 in total assets. The Plan sponsor is Aero Cast Inc. (the Employer), a Florida corporation which is in the metal casting business. The trustees of the Plan are David F. Janney (Mr. Janney) and Freda Janney (collectively, the Trustees). Mr. Janney is also the president and a 37% shareholder of the Employer. On November 7, 1989, the Employer sold all of its operating assets and on March 28, 1990, the Board of Directors of the Employer adopted a resolution to terminate the Plan as of March 31, 1990. The applicant represents that a form 5310 (Application for Determination upon Termination) was filed with the Internal Revenue Service on July 23, 1990.

2. On April 1, 1981, the Trustees acting on behalf of the Plan purchased 200 units of E.F. Hutton Qualified Properties 80–3 limited partnership (QP 80–3 Units) for $500.00 per unit for an aggregate amount of $100,000, and 100 units of Shelter Properties II limited partnership (SPII Units) for $1000.00 per unit for an aggregate amount of $100,000 from an independent third party broker. The applicant represents that the Plan incurred no costs as a result of holding these Units.

3. The remaining 33 QP 80–3 Units and 16 SPII Units were transferred on April 1, 1988 to the AmCast Industrial Corporation Profit Sharing Plan for Salaried Employees (the AmCast Plan). On that date, AmCast Industrial Corporation (AmCast), sponsor of the AmCast Plan, ceased its participation in the Plan, and accordingly the Trustees transferred to the AmCast Plan the assets and liabilities of the Plan attributable to the accounts of the employees which were previously covered under the Plan. The applicant represents that the appropriate 5310 forms regarding the above referenced transfer of assets were filed by AmCast on February 22, 1988, with the Internal Revenue Service in Cincinatti, Ohio, and that this transfer did not affect the qualification of the Plan. AmCast is a publicly held corporation and aside from prior sponsorship of the Plan is unrelated to the Employer.

4. The QP 80–3 partnership (the QP 80–3 Partnership) was organized under the laws of the Commonwealth of Virginia pursuant to a Certificate and Agreement of Limited Partnership dated and filed January 13, 1981. Since inception, QP 80–3 Partnership has acquired four commercial office buildings and an office/warehouse facility (QP 80–3 Properties), which are located in Virginia Beach, Virginia; Memphis, Tennessee and San Jose, California. The QP 80–3 Partnership will continue until December 31, 2010, unless sooner terminated in accordance with the QP 80–3 Partnership agreement. The SPII partnership (the SPII Partnership; collectively, the Partnerships) was organized under the laws of the State of South Carolina pursuant to a Certificate and Agreement of Limited Partnership filed October 10, 1980, and which terminates December 31, 2020. The SPII Partnership commenced its operations on March 31, 1981, and completed its acquisition of apartment properties in June 1981. As of December 31, 1989, SPII Partnership owned three such properties which are located in Dear Park, Texas; Anderson, South Carolina and Winter Park, Florida.

5. The applicant submitted several values for the Units owned by the Plan. The Plan currently has a .3% minority interest in each of the Partnerships. The first method of calculating value was the net asset value approach (Net Asset Value). The Net Asset Value approach was contained in the Annual Reports of the Partnerships, which were prepared by the respective general partners who are independent of the Employer. The Net Asset Value approach is based on certain hypothetical conditions. The amount calculated by this method represents what each limited partner would receive per Unit if the underlying properties of each partnership were sold at their current appraised values and net proceeds were distributed in the liquidation of each partnership. The Net Asset Value does not account for real estate brokerage commissions or other costs associated with the sale of the underlying properties. Because of such expenses, cash available for distribution to the partners would be less than the projected Net Asset Value upon actual sale of the underlying properties. Based on the appraisals of the QP 80–3 Properties and the remaining assets and liabilities of the QP 80–3 Partnership as of December 31, 1989, the general partners of the QP 80–3 Partnership estimate that the Net Asset Value of each QP 80–3 Unit as $450.74 (the QP 80–3 Net Asset Value). Under the same assumptions, the general partners of the SPII Partnership estimate the SPII Net Asset Value as $616 per SPII Unit as of December 31, 1989.

6. The applicant also submitted a statement dated May 24, 1990 from Stewart Liebelt (Mr. Liebelt), first vice president of Shearson, Lehman, Hutton in Ormond Beach, Florida. Mr. Liebelt maintains that he is independent with regard to the Plan and the Employer. Mr. Liebelt represents that the last actual sale of QP 80–3 Units offered for sale through the system took place in November 1989 at $200.00 per Unit (QP 80–3 Market Price), and that the last actual sale of SPII Units occurred in January 1990 at $550 per Unit (SPII Market Price).

7. The applicant represents that the Net Asset Value approach and the Market Price approach use different underlying principles. The Market Price approach assumes the presence of a willing buyer. On the other hand, the Net Asset Value approach is generally based upon the fair market value of the underlying assets and is contingent on the Partnerships' ability to sell the underlying assets at their appraised values and thus to liquidate the Partnerships. However, as the applicant represents, because there is a current lack of a public market and demand for these Units, the Market Price is less than the Net Asset Value.

8. Further, based upon a schedule of cash distributions to the Plan since acquisition of the Units, the Trustees have determined the basis of the Plan in each Unit in both Partnerships. Specifically, with regard to the QP 80–3 Partnership, the Plan received $185.76 in cash distributions for each Unit since acquisition and accordingly, the basis of the Plan in each Unit is currently $314.24 (QP 80–3 Basis Price). With regard to the SPII partnership, the Plan received $278.24 in cash distributions for each Unit since acquisition, and accordingly, the basis of the Plan in each Unit is currently $721.76 (SPII Basis Price).

9. Therefore, Mr. Janney intends to purchase the 167 QP 80–3 Units at $450.74 per Unit and 84 SPII Units at $721.76 per Unit, for respective aggregate amounts of $75,274 and $62,793. These prices represent the QP 80–3 Net Asset Value and SPII Basis Price, which are the highest values for each of the respective Units.[6] The

[6] In the case of SPII Units, the SPII Basis Price is greater than the SPII Net Asset Value and the SPII Market Price. In the case of QP 80–3, the QP 80–3 Net Asset Value is greater than the QP 80.3 Basis Price and QP 80–3 Market Price.

purchases will be a one-time cash transaction and the Plan will pay no costs or commissions with respect to the transaction.

10. The applicant represents that the Plan will experience economic hardship if the transaction is denied because the Plan will be unable to liquidate the Units on the public market at prices close to the prices which will be paid by Mr. Janney. Furthermore, the QP 80–3 Partnership agreement and the SPII Partnership agreement do not permit the Plan to distribute fractional interests in the Units to the Plan participants in proportion to their account balances in the Plan. Also, there is a substantial possibility that the Plan will be unable to find an unrelated third party buyer for the Units, and as such the denial of the proposed transaction would delay and ultimately reduce the amount of cash distributions to Plan participants. As such, the proposed transaction is in the best interest and protective of the Plan because it will enable the Plan to receive certain values per Unit that are substantially higher than the prices the Units command on the public market. It is also represented that the limitations of section 415 of the Internal Revenue Code regarding employer contributions to defined contribution plans will not be exceeded as a result of the proposed transaction.

11. In summary, the applicant represents that the proposed transaction satisfies the statutory criteria of section 408(a) of the Act and section 4975(c)(2) of the Code because:

(a) The proposed sale will be a one-time transaction;

(b) The Plan will pay no costs or commissions with respect to the sale;

(c) The respective aggregate prices for the QP 80–3 Units and SPII Units will be the greater of $75,274 and $62,793 or the fair market value of the Units as determined at the time of the sale by a qualified independent appraiser; and

(d) The sale will enable the Plan to liquidate its assets and, upon termination, to make timely cash distributions to the Plan participants.

Tax Consequences of the Transaction

The Department of the Treasury has determined that if a transaction between a qualified employee plan and its sponsoring employer (or affiliate thereof) results in the plan either paying less or receiving more than fair market value, such excess may be considered to be a contribution by the sponsoring employer to the plan, and therefore must be examined under the applicable provisions of the Internal Revenue Code, including sections 401(a)(4), 404 and 415.

FOR FURTHER INFORMATION CONTACT: Ekaterina A. Uzlyan of the Department, telephone (202) 523–8194. (This is not a toll-free number.)

Chillicothe Telephone Company Hourly Employees' Pension Plan (the Hourly Plan) and the Chillicothe Telephone Company Salaried Employees' Pension Plan (the Salaried Plan; Collectively, the Plans)—Located in Chillicothe, OH

[Application Nos. D–8431 and D–8432, respectively]

Proposed Exemption

The Department is considering granting an exemption under the authority of section 408(a) of the Act and section 4975(c)(2) of the Code and in accordance with the procedures set forth in ERISA Procedure 75–1 (40 FR 18471, April 28, 1975). If the exemption is granted, the restrictions of section 406(a), 406 (b)(1) and (b)(2) of the Act and the sanctions resulting from the application of section 4975 of the Code by reason of section 4975(c)(1) (A) through (E) of the code shall not apply to: (1) The proposed cash sale by the Salaried Plan of a parcel of improved real property (the 52 Property) to Chillicothe Telephone Company (the Employer), a party in interest with respect to the Plan; and (2) the proposed cash sale by the Salaried Plan and the Hourly Plan of another parcel of improved real property (the 74–76 Property; collectively, the Properties) for, with respect to each Property, the greater of (a) the fair market value on the date of sale or (b) the acquisition price of the Property.

Summary of Facts and Representations

1. The Employer is an independent operating public utility furnishing local and long distance telephone service in Chillicothe, Ohio and in the surrounding areas. The Employer, which was incorporated under the laws of the State of Ohio in 1926, maintains its principal place of business at 68 East Main Street, Chillicothe, Ohio.

2. The Employer sponsors two defined benefit pension plans, the Hourly Plan had 106 participants and the salaried plan had 101 participants. As of August 31, 1989, the hourly plan and the Salaried Plan which cover all of the employees of the Employer. As of January 31, 1990, the Hourly Plan had 106 participants and the Salaried Plan had 101 participants. As of August 31, 1989, the hourly plan and the Salaried Plan had total net assets available for benefits of $2,583,361 and $4,428,848, respectively. The applicant represents that the Plans are not parties in interest with respect to each other within the meaning of section 3(14) of the Act. In addition, the Plans do not have common participants.

The trustees of the Plans (the Trustees) are Messrs. Joseph G. Kear, Thomas McKell, Jack E. Thompson and Tennent Hoey. The Trustees make investment decisions for the Plans and also serve as shareholders, corporate officers and legal counsel to the Employer.

3. On August 26, 1962, the Hourly Plan, which formerly covered both hourly and salaried employees of the Employer, purchased a parcel of improved real property located at 52 Main Street, Chillicothe, Ohio. The 52 Property is contiguous to other real property owned by the Employer. It consists of a two-story brick structure and an adjoining concrete and tile building.

The Hourly Plan acquired the 52 Property at a sheriff's sale for the total cas consideration of $28,000. The sheriff's sale had been decreed by the Court of Common Pleas of Ross County, Ohio in satisfaction of a judgment in the amount of $34,481 that had been recovered by the Citizens National Bank of Chillicothe, Ohio against George Elsass and others in April 1962. The Hourly Plan's acquisition of the 52 Property for $28,000 had the effect of extinguishing the indebtedness owed on such property.

On June 30, 1966, the Salaried Plan was spun-off from the Hourly Plan in order that the Salaried Plan would cover only salaried employees of the Employer. Among the assets that were subsequently transferred from the Hourly Plan to the Salaried Plan was the 52 Property.

Since its acquisition by the Hourly Plan and later by the Salaried Plan, the 52 Property has not been encumbered by a mortgage nor has it been used by or leased to parties in interest. The entire premises comprising the 52 Property have, however, been leased exclusively to Tudor's (Tudor's) an unrelated party, under the provisions of a long-term lease that Tudor's had entered into with the previous owners of the 52 Property. Tudor's uses the demised premises as a women's clothing store. Currently, Tudor's pays the Salaried Plan a monthly rental of $600. The applicant represents that such rental payments have been made in a timely manner.

Under the provisions of its lease with Tudor's, the Hourly Plan pays for all real estate taxes, insurance and for the general maintenance of the premises. Since 1962, the Hourly Plan and subsequently the Salaried Plan, have incurred total operating expenses and real estate taxes of $72,401 in

connection with the 52 Property.[7] The Plans have received aggregate rental income of approximately $202,140 from Tudor's.

4. On May 3, 1975, the Hourly Plan and the Salaried Plan purchased undivided one-half interests in a parcel of real property located at 76 East Main Street, Chillicothe, Ohio. the 74–76 Property is improved with a two-story brick structure and a concrete pad and parking area. Such property is also contiguous to other real property owned by the Employer.

The Plans acquired the 74–76 Property from Mary Anne Schlegel and James A. Eldridge who were unrelated parties for $72,000. Each Plan made a lump sum cash payment to the sellers of $36,000.

The 74–76 Property is not presently encumbered by a mortgage. Since the time of its acquisition by the Plans, the ground floor of the 74–76 Property has been leased to City Loan and Savings Company (the Bank) of Lima, Ohio, an entity in which the Salaried Plan maintains a savings account.[8] No other use of the remainder of such property has been made by parties in interest. The Bank currently pays the Plans a monthly rental of $750 under the provisions of a written lease that expires on April 30, 1991. The Bank has the option of extending the lease for two additional three year terms at an increased rental.

The applicant states that the Plans have incurred $40,476 in operating costs, real estate taxes and capital improvements to the 74–76 Property. Of these expenses, the applicant explains that the Hourly Plan has expended $20,457 and the Salaried Plan, $20,119.[9] The Plans have also received aggregate rental income of $98,534.

5. The Trustees believe that the Properties are located in an area of declining marketability with little hope or expectation of improvement. The Trustees also believe that management of commercial property such as the Properties is unduly burdensome and the purchase of management services would not be economical to the Plans or in the best interests of their participants and beneficiaries. Therefore, the Trustees request an administrative exemption from the Department in order to sell the Properties to the Employer for a price equal to the greater of: (a) The fair market value of each Property on the date of sale; or (b) the acquisition price that the Plans have paid for each Property. The consideration for the Properties will be paid by the Employer in cash. The Plans will not be required to pay any real estate fees or commissions in connection therewith.[10]

6. The Properties have been appraised by Mr. C. Patrick McAllister (Mr. McAllister), M.A.I., an independent appraiser from Chillicothe, Ohio. In an appraisal report dated November 29, 1989, Mr. McAllister has placed the fair market value of a leased fee interest in the 52 Property at $58,000 as of of November 15, 1989. In another appraisal report dated November 29, 1989, Mr. McAllister has valued the 74–76 Property at $71,000, also as of November 15, 1989. In an updated appraisal dated October 25, 1990, Mr. McAllister has concluded that there would be no charge in the valuation of the 52 Property but that there would be a change in value for the 74–76 Property. Mr. McAllister asserts that he had incorrectly valued the 74–76 Property in his earlier appraisal due to his erroneous belief that the lease of such property was a triple net lease when, in fact, it was not. Upon a re-analysis of available market data, Mr. McAllister has determined that the fair market value of the 74–76 Property is $66,000 as of October 25, 1990. Mr. McAllister will again update his appraisals of the Properties prior to the sale.

Mr. McAllister also notes in an addendum to the appraisals, that properties in the Chillicothe, Ohio area have experienced a steady downward movement in land values over the past ten years. Although Mr. McAllister believes the decline will begin to stabilize, he sees no concrete evidence that increases in property values will prevail over the next several years.

Further, Mr. McAllister states that he has considered the unique or special value the Properties may have to the Employer and its principals by virtue of their proximity to other real estate owned by the Employer. Mr. McAllister states that he has taken this factor into consideration and he refers to such value as the "assemblage value".

7. In summary, it is represented that the proposed transactions will satisfy the statutory criteria for an exemption under section 408(a) of the Act because: (a) The sales will be one-time transactions for cash; (b) the Plans will sell the Properties to the Employer for the greater of: (1) The fair market value of each Property on the date of sale, or (2) the acquisition price that the Plans have paid for each Property; (c) the Properties have been appraised by Mr. McAllister, a qualified, independent appraiser; (d) the Plans will not be required to pay any real estate fees or commissions in connection with the sales; and (e) the sales will allow the Plans to dispose of the Properties and thereby reinvest the sale proceeds in higher yielding investment vehicles.

FOR FURTHER INFORMATION CONTACT: Ms. Jan D. Broady of the Department, telephone (202) 523–8881. (This is not a toll-free number.)

General Information

The attention of interested persons is directed to the following:

(1) The fact that a transaction is the subject of an exemption under section 408(a) of the Act and/or section 4975(c)(2) of the Code does not relieve a fiduciary or other party in interest or disqualified person from certain other provisions of the Act and/or the Code, including any prohibited transaction provisions to which the exemption does not apply and the general fiduciary responsibility provisions of section 404 of the Act, which among other things require a fiduciary to discharge his duties respecting the plan solely in the interest of the participants and beneficiaries of the plan and in a prudent fashion in accordance with section 404(a)(1)(B) of the Act; nor does it affect the requirement of section 401(a) of the Code that the plan must operate for the exclusive benefit of the employees of the employer maintaining the plan and their beneficiaries;

(2) Before an exemption may to granted under section 408(a) of the Act

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[7] Of the $72,401 total operating costs that have been incurred by the Plans during their ownership of the 52 Property, $15,861 has been expended for real estate taxes leaving $56,540 for maintenance expenses and improvements, the latter of which have not been financed. Included in the maintenance expenses have been the cost of a new roof in 1982 for $1,358 and in 1976, major structural repairs to the premises costing $3,539. In 1984, the roof was replaced due to hail damage for a cost net of insurance proceeds of $6,351. Thus, the applicant states that the maintenance expense for the 29 years that the Plans have individually owned the 52 Property is $45,292, or an average annual maintenance expense of $1,561.

[8] In the proposed exemption, the Department expresses no opinion regarding whether the circumstances surrounding the past and continued leasing of the 74–76 Property between the Plans and the Bank has violated any of the provisions of part 4 of title I of the Act.

[9] Of the $40,576 that the Plans have expended for the 74–76 Property, $36,900 has been incurred for operating costs and $3,676 has been spent on capital additions to the premises. Of the total operating costs, $11,173 has been spent by the Plans for real estate taxes leaving a balance of $25,727 for maintenance expenses. Such expenses have been incurred by the Plans for insurance, roof repair, sidewalks and exterior painting.

[10] The applicant states that the Salaried Plan, in compliance with its lease of the 52 Property, will offer Tudor's a right of first refusal with respect to Tudor's purchase of such property after the exemptive transactions described herein are approved by the Department. The applicant also states that it is unlikely that the Bank will continue leasing the 74–76 Property from the Plans inasmuch as the Bank has expressed a desire to relocate its operations.

and/or section 4975(c)(2) of the Code, the Department must find that the exemption is administratively feasible, in the interests of the plan and of its participants and beneficiaries and protective of the rights of participants and beneficiaries of the plan;

(3) The proposed exemptions, if granted, will be supplemental to, and not in derogation of, any other provisions of the Act and/or the Code, including statutory or administrative exemptions and transitional rules. Furthermore, the fact that a transaction is subject to an administrative or statutory exemption is not dispositive of whether the transaction is in fact a prohibited transaction; and

(4) The proposed exemptions, if granted, will be subject to the express condition that the material facts and representations contained in each application are true and complete, and that each application accurately describes all material terms of the transaction which is the subject of the exemption.

Signed at Washington, DC, this 19th day of December, 1990.

Ivan Strasfeld,

Director of Exemption Determinations, Pension and Welfare Benefits Administration, U.S. Department of Labor.

[FR Doc. 90-30089 Filed 12-21-90; 8:45 am]

BILLING CODE 4510-29-M

NATIONAL AERONAUTICS AND SPACE ADMINISTRATION

[Notice 90-106]

NASA Advisory Council (NAC), Aeronautics Advisory Committee (AAC): Meeting

AGENCY: National Aeronautics and Space Administration.

ACTION: Notice of Meeting.

SUMMARY: In accordance with the Federal Advisory Committee Act, Public Law 92-463, as amended, the National Aeronautics and Space Administration announces a forthcoming meeting of the NASA Advisory Council, Aeronautics Advisory Committee, Aviation Safety Reporting System Subcommittee.

DATES: January 17, 1991, 1 p.m. to 5 p.m.; and January 18, 1991, 8:30 a.m. to 2 p.m.

ADDRESSES: Sheraton Premiere At Tysons Corner, Pavillion 25 Room, 8661 Leesburg Pike, Vienna, VA 22182.

FOR FURTHER INFORMATION CONTACT: Mr. William Reynard, Office of Aviation Safety Reporting System, National Aeronautics and Space Administration, Ames Research Center, Moffett Field, CA 94035, 415/969-3969.

SUPPLEMENTARY INFORMATION: The NAC Aeronautics Advisory Committee, Aviation Safety Reporting System Subcommittee was established to provide overall advice and recommendations to the Office of Aeronautics, Exploration and Technology (OAET) on aviation safety needs. The Subcommittee, chaired by Captain C.R. Paty, is composed of ten members. The meeting will be open to the public up to the seating capacity of the room (approximately 40 persons including the Subcommittee members and other participants)..

TYPE OF MEETING: Open.

AGENDA:

January 17, 1991

1 p.m.—Opening Remarks.
1:15 p.m.—Review of Reston Aviation Safety Reporting System Research Workshop.
4 p.m.—Operations Report.
5 p.m.—Adjourn.

January 18, 1991

8:30 a.m.—Review of Workshop Recommendations.
10 a.m.—Group Discussion and Recommendations.
11:30 a.m.—New Business.
1:30 p.m.—Wrap Up Session.
2 p.m.—Adjourn.

Dated: December 14, 1990.

John W. Gaff,

Advisory Committee Management Officer, National Aeronautics and Space Administration.

[FR Doc. 90-29944 Filed 12-21-90; 8:45 am]

BILLING CODE 7510-01-M

NATIONAL FOUNDATION ON THE ARTS AND THE HUMANITIES

Meeting, Media Arts Advisory Panel

Pursuant to section 10(a)(2) of the Federal Advisory Committee Act (Public Law 92-463), as amended, notice is hereby given that a meeting of the Media Arts Advisory Panel (American Film Institute Section) to the National Council on the Arts will be held on January 4, 1991 from 9:30 a.m.—5 p.m. in room 716 at the Nancy Hanks Center, 1100 Pennsylvania Avenue, NW., Washington, DC 20506.

A portion of this meeting will be open to the public from 9:30 p.m.-10 a.m. The topic will be introductory remarks.

The remaining portion of this meeting from 10 a.m.-5 p.m. is for the purpose of Panal review, discussion, evaluation, and recommendation on applications for financial assistance under the National Foundation on the Arts and the Humanities Act of 1965, as amended, including information given in confidence to the agency by grant applicants. In accordance with the determination of the Chairman of December 11, 1990, this session will be closed to the public pursuant to subsubsection (c)(4), (6) and (9)(B) of section 552b of title 5, United States Code.

Any interested persons may attend, as observers, meetings, or portions thereof, of advisory panels which are open to the public.

Members of the public attending an open session of a meeting will be permitted to participate in the panel's discussions at the discretion of the chairman of the panel if the chairman is a full-time Federal employee. If the chairman is not a full-time Federal employee, then public participation will be permitted at the chairman's discretion with the approval of the full-time Federal employee in attendance at the meeting, in compliance with this guidance.

If you need special accommodations due to a disability, please contact the Office of Special Constituencies, National Endowment for the Arts, 1100 Pennsylvania Avenue, NW., Washington, DC 20506, 202/682-5532, TTY 202/682-5496, at least seven (7) days prior to the meeting.

Further information with reference to this meeting can be obtained from Ms. Yvonne M. Sabine, Advisory Committee Management Officer, National Endowment for the Arts, Washington, DC 20506, or call (202) 682-5433.

Yvonne M. Sabine,

Director, Council and Panel Operations, National Endowment for the Arts.

[FR Doc. 90-29946 Filed 12-21-90; 8:45 am]

BILLING CODE 7537-01-M

NATIONAL SCIENCE FOUNDATION

Committee Management Notice of Renewal

The cognizant Assistant Directors for the Advisory Committees listed below have determined that the renewal of these groups is necessary and in the public interest in connection with the performance of duties imposed upon the Director, National Science Foundation (NSF), by 42 U.S.C. 1861 *et seq.* This determination follows consultation with the Committee Management Secretariat, General Services Administration.

Advisory Committee for Microelectronic Information Processing Systems

Advisory Committee for Information, Robotics & Intelligent Systems

Committee on Equal Opportunities in Science and Engineering (formerly called Committee on Equal

Opportunities in Science and Technology)

Authority for these Committees will expire on December 18, 1992 unless they are renewed.

Dated: December 18, 1990.

M. Rebecca Winkler,

Committee Management Officer.

[FR Doc. 90-29969 Filed 12-21-90; 8:45 am]

BILLING CODE 7555-01-M

NUCLEAR REGULATORY COMMISSION

Nominations for New Members of the Advisory Committee on the Medical Uses of Isotopes

AGENCY: Nuclear Regulatory Commission.

ACTION: Call for nominations.

SUMMARY: The Nuclear Regulatory Commission (NRC) is increasing membership on its Advisory Committee on the Medical Uses of Isotopes (ACMUI) and is inviting nominations of qualified individuals from public interest groups representing patients' rights and care, individuals having expertise in state regulatory programs governing medicine, and individuals having expert qualifications in certain medical specialty fields.

DATES: Nominations due by February 22, 1991.

ADDRESS: Submit nominations to: Secretary of the Commission, ATTN: Advisory Committee Management Officer, Nuclear Regulatory Commission, Washington, DC 20555.

FOR FURTHER INFORMATION CONTACT: Larry Camper, Medical, Academic, and Commercial Use Safety Branch, MS 6-H-3, U.S. Nuclear Regulatory Commission, Washington, DC 20555, telephone (301) 492-3417.

SUPPLEMENTARY INFORMATION: The ACMUI advises the NRC on policy and technical issues that arise in regulating the medical use of byproduct material for diagnosis and therapy. Responsibilities include providing guidance and comments on changes in NRC rules, regulations, and guides concerning medical use; evaluating certain non-routine uses of byproduct material for medical use; and providing technical assistance in licensing, inspection, and enforcement cases.

Committee members possess the medical and technical specialty skills needed to address evolving issues. The ACMUI currently consists of two physician specialists in therapeutic radiology; four physician specialists in nuclear medicine, with backgrounds in pathology, radiology, internal medicine, and nuclear cardiology; one nuclear medicine technologist; a radiopharmacist; and two specialists in medical physics. Because NRC is now examining issues such as quality assurance, and traiing and experience criteria, it is appropriate to expand the ACMUI's experience base to include new members who not only are technically qualified, but also can represent patients' interests or have experience from the perspective of the States on the regulation of radioactive material for medical use.

NRC is soliciting nominations of persons to fill the following three openings on the ACMUI; an individual qualified to address patient's rights and care, a person with broad experience in medical regulation as conducted by the individual States, and a brachytherapy physician. Persons who can provide perspectives from organizations on patients' rights and care, or regulatory agencies of States, as well as physicians having expertise in brachytheraphy are encouraged to apply.

Committee members will serve a 2-year term with possible reappointment.

Nominations must include a resume describing the educational and professional qualifications of the nominee, and provide the nominee's current address and telephone number.

Nominees must be U.S. citizens and be able to devote approximately 80 hours per year to committee business. Members will be compensated and reimbursed for travel (including per diem in lieu of subsistence), secretarial, and correspondence expenses.

Dated at Washington, DC, this 18th day of December, 1990.

For the U.S. Nuclear Regulatory Commission.

John C. Hoyle,

Advisory Committee Management Officer.

[FR Doc. 90-30076 Filed 12-21-90; 8:45 am]

BILLING CODE 7590-01-M

[Docket No. 50-440]

The Cleveland Electric Illuminating Co., et al.; Environmental Assessment and Finding of No Significant Impact

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Facility Operating License No. NPF-58, issued to the Cleveland Electric Illuminating Company, Duquesne Light Company, Ohio Edison Company, Pennsylvania Power Company, and Toledo Edison Company, (the licensees), for operation of the Perry Nuclear Power Plant, Unit No. 1, located in Lake County, Ohio.

Environmental Assessment

Identification of Proposed Action

The proposed amendment would add the Centerior Service Company as a licensee to Facility Operating License NPF-58 for the Perry Nuclear Power Plant, Unit 1 (PNPP). The proposed addition would authorize both the Cleveland Electric Illuminating Company (CEI) and the Centerior Service Company (wholly-owned subsidiaries of Centerior Energy Corporation) to act as agents on behalf of the other licensees for the PNPP, and have exclusive responsibility and control over the physical construction, operation and maintenance of the facility. The proposed amendment would also revise the license and the PNPP Technical Specifications to reflect the fact that the existing CEI nuclear organization reports to Centerior Service Company.

The proposed action is in accordance with the licensees' application for amendment dated July 17, 1990, as supplemented by letter dated November 30, 1990.

The Need for the Proposed Action

The proposed changes are needed to reflect the reorganization of the Centerior Energy Corporation, its operating company subsidiaries—The Cleveland Electric Illuminating Company and the Toledo Edison Company, and its existing service company subsidiary—Centerior Service Company. The proposed changes are intended to provide for improved management oversight, control and uniformity of the nuclear operations within the Centerior Energy Corporation.

Environmental Impacts of the Proposed Action

The proposed changes would add Centerior Service Company as a licensee to the PNPP Facility Operating License. Under the reorganization of the Centerior Energy Corporation, the CEI nuclear organization reports to Centerior Service Company. As a result, the title of CEI Vice President—Nuclear Group has been changed to Centerior Service Company, Vice President, Nuclear—Perry. There will be no changes in the CEI nuclear organization and no changes to the facility, to the operations, maintenance, engineering or other nuclear related personnel as a result of the proposed license amendment. Accordingly, the Commission concludes that this

proposed action would result in no radiological or non-radiological environmental impact.

The Notice of Consideration of Issuance of Amendment and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing in connection with this action was published in the **Federal Register** on October 3, 1990 (55 FR 40463). No request for hearing or petition for leave to intervene was filed following this notice.

Alternative to the Proposed Action

Since the Commission concluded that there are no significant environmental effects that would result from the proposed action, any alternatives with equals or greater environmental impacts need not be evaluated.

The principal alternative would be to deny the requested amendment. This would not reduce the environmental impacts of plant operation and would result in the Facility Operating License and Technical Specifications not properly reflecting the existing organizational relationships between CEI, Centerior Service Company and the PNPP.

Alternative Use of Resources

This action does not involve the use of any resources not previously considered in the Final Environmental Statement for the Perry Nuclear Power Plant, Unit No. 1, dated August 1982.

Agencies and Persons Consulted

The NRC staff reviewed the licensees' request and did not consult other agencies and persons.

Finding of No Significant Impact

The Commission has determined not to prepare an environmental impact statement for the proposed license amendment.

Based upon the foregoing environmental assessment, we conclude that the proposed action will not have a significant effect on the quality of the human environment.

For further details with respect to this action, see the application for amendment dated July 17, 1990 and a supplement dated November 30, 1990, which are available for public inspection at the Commission's Public Document Room, 2120 L Street NW., Washington, DC and at the Perry Public Library, 3753 Main Street, Perry, Ohio 44081.

Dated at Rockville, Maryland, this 18th day of December, 1990.

For the Nuclear Regulatory Commission.

John N. Hannon,

Director, Project Directorate III–3, Division of Reactor Projects—III, IV, and V, Office of Nuclear Reactor Regulation.

[FR Doc. 90–30075 Filed 12–21–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 50–254 and 50–265]

Commonwealth Edison Co. (Quad Cities Nuclear Power Station, Units 1 and 2); Exemption

I.

The Commonwealth Edison Company (CECo or the licensee) is the holder of Operating License No. DPR–29 which authorizes operation of Quad Cities Nuclear Power Station (QCNPS) Unit 1, and Operating License No. DRP–30 which authorizes operation of Unit 2. These licenses provide, among other things, that QCNPS Units 1 and 2, are subject to all rules, regulations, and Orders of the Commission now or hereafter in effect.

The station is comprised of two boiling water reactors at the licensee's site located in Rock Island County, Illinois.

II.

In September 1987, the Fermi 2 plant was found to be vulnerable to a total Low Pressure Coolant Injection (LPCI) failure resulting from a single failure of DC control power in one division. In reviewing the design modifications proposed to correct this vulnerability, the staff relooked at the LPCI swing bus design.

The original Quad Cities (a BWR–4 plant) design utilizes the swing bus configuration to provide power to the valves required for Low Pressure Coolant Injection (LPCI) from either of two redundant standby (onsite) power sources. Under Regulatory Guide (R.G.) 1.6 for Class 1E electric power systems, a swing bus concept does not satisfy the single failure criterion as it can potentially cause redundant emergency diesel generators to be paralleled resulting in the loss of redundant emergency power sources (common mode failure). Since a swing bus could compromise this independence requirement of redundant Class 1E power sources and their load groups, automatic bus transfer schemes are not permitted between redundant safety trains. The swing bus configuration violates General Design Criterion (GDC) 17 of appendix A to 10 CFR part 50 requirements as the onsite electrical power systems do not have the desired independence to ensure performance of their safety functions.

III.

The swing bus design was permitted in the past to accommodate the design of the ECCS/LPCI mechanical system, valve arrangement, loop selection logic, etc. The staff acknowledged and approved the LPCI swing bus design weakness in section 3.6.2 of the Quad Cities Safety Evaluation Report, dated August 25, 1971. However, an Exemption to GDC–17 had never been issued. Furthermore, the LPCI swing bus design weakness had been identified as one of fifteen technical issues in NUREG–0138, issued November 1976. The staff discussion had been provided in the NUREG under Issue No. 3 entitled, "Acceptability of Swing Bus Design of BWR–4 [1] Plants." It stated that, "The swing bus design approved for use in the BWR–4 plants does not satisfy the single failure criterion or the independence requirements of GDC–17." It further stated that, "the swing bus design was accepted in construction permit (CP) review of the BWR–4 product line prior to development of R.G. 1.6." As a result, the staff did not require that the BWR–4 product line be changed to eliminate the swing bus design, except for some plants when such a change was required to meet the ECCS criteria of 10 CFR 50.46. For those plants that chose not to perform an analysis of a complete LPCI failure coincident with LOCA analysis, the licensees were either required to remove the swing bus design or to commit to do so. In some cases, plants were allowed to modify the LPCI swing bus design into a split-bus design so that it could take credit for a portion of the LPCI flow in LOCA analysis.

Although the LPCI swing bus has never satisfied R.G. 1.6 recommendations, the staff accepted the swing bus design in NUREG–0138 principally because the ECCS acceptance criteria can be met without any LPCI function. Nevertheless, for those BWR–3 and –4 plants that retained their swing bus design, the staff suggested the following alternative recommendations which are considered comparable to meeting R.G. 1.6 recommendations:

A. (1) Only loads associated with LPCI function, i.e., LPCI valve motors may be connected to the swing bus so as to confine single failures within the swing bus.

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[1] The staff found that the LPCI swing bus design has been used in both BWR–3 and –4 product lines, therefore, this issue applies to both BWR–3 and –4 plants.

(2) The bus transfer scheme (circuitry) must meet the applicable portions of IEEE Standard 279, such as the *single failure criterion*, testability, and quality of components to reduce probability of propagating electrical faults between divisions.

(3) Proper coordination of circuit protective devices must be provided to lessen probability of propagating faults into non-LPCI portions of the electrical division. This requires that the design provide both an adequate number of circuit breakers and proper breaker coordination.

B. Splitting the swing bus into two buses to obtain partial ECCS credit.

R.G. 1.6 prohibits the use of the swing bus as it does not satisfy the staff position regarding sufficient independence to satisfy GDC 17. However, the staff has determined that reasonable independence can be assured with the implementation of either the above alternate recommendations. Quad Cities has implemented the first of the alternate recommendations which brings the design to a level of safety comparable to that of meeting GDC 17. On this basis, the staff did not consider that the increase in independence provided by a change in the swing bus design to satisfy R.G. 1.6 was justified for Quad Cities.

IV.

Accordingly, the Commission has determined that, pursuant to 10 CFR 50.12: (a)(1) and (a)(2)(ii) the Exemption from GDC 17 is authorized by law, will not present an undue risk to the public health and safety, and is consistent with the common defense and security, and (2) application of the regulation in the particular circumstances is not necessary to achieve the underlying purpose of the rule. The Commission has reexamined its 1976 discussion (Issue No. 3) in NUREG–0138 and the technical basis, and continues to concur with the general technical assessment, therein, that alternative recommendations set out above provide an equivalent level of safety as that which be achieved without a swing bus design. Accordingly, the Commission hereby grants the Exemption from GDC 17 of appendix A to 10 CFR part 50.

Pursuant to 10 CFR 51.21, 51.32, and 51.35, an environmental assessment and finding of no significant impact has been prepared and published in the **Federal Register** (55 FR 50624). Accordingly, based upon the environmental assessment, the Commission has determined that the granting of this exemption will not have a significant effect on the quality of the human environment.

This exemption is effective upon issuance.

For the Nuclear Regulatory Commission.

Dated at Rockville, Maryland this 7th day of December 1990.

Bruce A. Boger,

Director, Division of Reactor Projects III/IV/V Office of Nuclear Reactor Regulation.

[FR Doc. 90–30077 Filed 12–21–90; 8:45 am]

BILLING CODE 7590–01–M

Consumers Power Co., Consideration of Issuance of Amendment to Provisional Operating License and Proposed No Significant Hazards Consideration Determination and Opportunity for Hearing

The U.S. Nuclear Regulatory Commission (the Commission) is considering issuance of an amendment to Provisional Operating License No. DPR–20 issued to Consumers Power Company (the licensee), for operation of the Palisades Point, located in Van Buren County, Michigan.

The proposed amendment would allow use of the Regulatory Guide (RG) 1.97 qualified neutron monitoring system which is being installed during the current refueling outage. The changes in the neutron monitoring system involve using existing fission chambers, installing new cables from the fission chambers through two new electric penetrations to preamplifiers (previously located inside, but now located outside containment), and installing new cables from the preamplifiers to power sources in the Control Room. The new system is qualified to the criteria of RF 1.97, whereas the previously existing system was not. Additionally, a change is proposed to the description of the mechanically fixed absorber rods.

Specifically, Technical Specification (TS) 3.17, and Tables 3.17.1, 3.17.4, 3.25.1, 4.1.1, 4.1.3, and 4.21.1 are updated to reflect the new RG 1.97 qualified neutron monitoring system installed during this outage. Additionally, TS 5.3.2d is revised to correct the description of fixed absorber rods in use at the plant.

Before issuance of the proposed license amendments, the Commission will have made findings required by the Atomic Energy Act of 1954, as amended (the Act), and the Commission's regulations.

The Commission has made a proposed determination that the amendment request involves no significant hazards consideration. Under the Commission's regulations in 10 CFR 50.92, this means that operation of the facility in accordance with the proposed amendment would not (1) involve significant increase in the probability or consequences of an accident previously evaluated; or (2) create the possibility of a new or different kind of accident from any accident previously evaluated; or (3) involve a significant reduction in a margin of safety.

The licensee provided an analysis that addressed the above three standards in the amendment application.

1. The proposed changes would not involve a significant increase in the probability or consequences of an accident previously evaluated because these changes enhance the reliability of the accuracy of the neutron monitoring function under accident conditions and permit use of material other than boron as a neutron absorber in the fixed absorber rods. The Source Range and Wide Range neutron monitoring instrument systems perform the same function as existing systems. The new RF 1.97 qualified instrument systems will monitor reactor power more reliably under accident conditions and will provide the operator with more reliable information which may allow actions to be taken that could reduce the consequences of an accident previously evaluated.

The use of material other than boron in the fixed absorber rods will not affect the probability or the consequences of an accident previously evaluated since the fuel reload design, using Boron or other absorbers in the fixed absorber rods, must meet the same fuel design criteria.

2. The proposed change would not create the possibility of a new or different kind of accident from any accident previously evaluated because this Technical Specification change only reflects the use of upgraded neutron monitoring equipment and fixed absorber rods which will perform the same function as existing equipment.

3. The proposed change would not involve a significant reduction in the margin of safety because the upgraded neutron monitoring equipment identified in this proposed change performs the same function as existing equipment and will be more reliable under accident conditions. The degree of redundancy of the new equipment remains the same.

The mechanically fixed absorber rods using material other than boron meet fuel reload design criteria.

Absorber materials other than boron perform the same function as boron within the reload design criteria and the use of absorber materials other than boron does not effect the margin of safety.

Therefore, the margin of safety is not reduced by the new more stringently

qualified neutron monitoring system or by using different neutron absorbing material in the fixed absorber rods.

Since these changes only reflect use of material or equipment which will perform the same functions as existing equipment, they do not involve a significant reduction in the margin of safety.

Therefore, based on the above considerations, the Commission has made a proposed determination that the amendment request involves no significant hazards consideration.

The Commission is seeking public comments on this proposed determination. Any comments received within 30 days after the date of publication of this notice will be considered in making any final determination. The Commission will not normally make a final determination unless it receives a request for a hearing.

Written comments may be submitted by mail to the Regulatory Publications Branch, Division of Freedom of Information and Publications Services, Office of Administration, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and should cite the publication date and page number of this Federal Register notice. Written comments may also be delivered to Room P–223, Phillips Building, 7920 Norfolk Avenue, Bethesda, Maryland, from 7:30 a.m. to 4:15 p.m. Copies of written comments received may be examined at the NRC Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC. The filing of requests for hearing and petitions for leave to intervene is discussed below.

By January 23, 1991, the licensee may file a request for a hearing with respect to issuance of the amendment to the subject facility operating license and any person whose interest may be affected by this proceeding and who wishes to participate as a party in the proceeding must file a written petition for leave to intervene. Requests for a hearing and petitions for leave to intervene shall be filed in accordance with the Commission's "Rules of Practice for Domestic Licensing Proceedings" in 10 CFR part 2. Interested persons should consult a current copy of 10 CFR 2.714 which is available at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW., Washington, DC 20555 and at the local public document room located at the Van Zoeren Library, Hope College, Holland, Michigan. If a request for a hearing or petition for leave to intervene is filed by the above date, the Commission or an Atomic Safety and Licensing Board, designated by the Commission or by the Chairman of the Atomic Safety and Licensing Board Panel, will rule on the request and/or petition and the Secretary or the designated Atomic Safety and Licensing Board will issue a notice of hearing or an appropriate order.

As required by 10 CFR 2.714, a petition for leave to intervene shall set forth with particularity the interest of the petitioner in the proceeding, and how that interest may be affected by the results of the proceeding. The petition should specifically explain the reasons why intervention should be permitted with particular reference to the following factors: (1) The nature of the petitioner's right under the Act to be made a party to the proceeding; (2) the nature and extent of the petitioner's property, financial, or other interest in the proceeding; and (3) the possible effect of any order which may be entered in the proceeding on the petitioner's interest. The petition should also identify the specific aspect(s) of the subject matter of the proceeding as to which petitioner wishes to intervene. Any person who has filed a petition for leave to intervene or who has been admitted as a party may amend the petition without requesting leave of the Board up to fifteen (15) days prior to the first prehearing conference scheduled in the proceeding, but such an amended petition must satisfy the specificity requirements described above.

Not later than fifteen (15) days prior to the first prehearing conference scheduled in the proceedings, a petitioner shall file a supplement to the petition to intervene which must include a list of the contentions which are sought to be litigated in the matter. Each contention must consist of a specific statement of the issue of law or fact to be raised or controverted. In addition, the petitioner shall provide a brief explanation of the bases of the contention and a concise statement of the alleged facts or expert opinion which support the contention and on which the petitioner intends to rely in proving the contention at the hearing. The petitioner must also provide references to those specific sources and documents of which the petitioner is aware and on which the petitioner intends to rely to establish those facts or expert opinion. Petitioner must provide sufficient information to show that a genuine dispute exists with the applicant on a material issue of law or fact. Contentions shall be limited to matters within the scope of the amendment under consideration. The contention must be one which, if proven, would entitle the petitioner to relief. A petitioner who fails to file such a supplement which satisfies these requirements with respect to at least one contention will not be permitted to participate as a party.

Those permitted to intervene become parties to the proceeding, subject to any limitations in the order granting leave to intervene, and have the opportunity to participate fully in the conduct of the hearing, including the opportunity to present evidence and cross-examine witnesses.

If a hearing is requested, the Commission will make a final determination on the issue of no significant hazards consideration. The final determination will serve to decide when the hearing is held.

If the final determination is that the amendment request involves no significant hazards consideration, the Commission may issue the amendment and make it effective, notwithstanding the request for a hearing. Any hearing held would take place after issuance of the amendment.

If the final determination is that the amendment request involves a significant hazards consideration, any hearing held would take place before the issuance of any amendment.

Normally, the Commission will not issue the amendment until the expiration of the 30-day notice period. However, should circumstances change during the notice period such that failure to act in a timely way would result, for example, in derating or shutdown of the facility, the Commission may issue the license amendment before the expiration of the 30-day notice period, provided that its final determination is that the amendment involves no significant hazards consideration. The final determination will consider all public and State comments received. Should the Commission take this action, it will publish a notice of issuance and provide for opportunity for a hearing after issuance. The Commission expects that the need to take this action will occur very infrequently.

A request for a hearing or a petition for leave to intervene must be filed with the Secretary of the Commission, U.S. Nuclear Regulatory Commission, Washington, DC 20555, Attention: Docketing and Service Branch, or may be delivered to the Commission's Public Document Room, the Gelman Building, 2120 L Street NW Washington, DC, by the above date. Where petitions are filed during the last ten (10) days of the notice period, it is requested that the petitioner promptly so inform the Commission by a toll-free telephone call to Western Union at 1(800) 325–6000 (in Missouri 1 (800) 342–6700). The Western

Union operator should be given Datagram Identification Number 3737 and the following message addressed to L.B. Marsh: Petitioner's name and telephone number; date petition was mailed; plant name; and publication date and page number of this Federal Register notice. A copy of the petition should also be sent to the Office of the General Counsel, U.S. Nuclear Regulatory Commission, Washington, DC 20555, and to Judd L. Bacon Esq., Consumers Power Company, 212 West Michigan Avenue, Jackson, Michigan 49201, attorney for the licensee.

Nontimely filings of petitions for leave to intervene, amended petitions, supplemental petitions and/or requests for hearing will not be entertained absent a determination by the Commission, the presiding officer, or the Atomic Safety and Licensing Board that the petition and/or request, should be granted based upon a balancing of the factors specified in 10 CFR 2.714(a)(1)(i)–(v) and 2.714(d).

For further details with respect to this action, see the application for amendment dated November 2, 1990, which is available for public inspection at the Commission's Public Document Room, the Gelman Building, 2120 L Street NW Washington, DC 20555, and at the Van Zoeren Library, Hope College, Holland, Michigan 49423.

Dated at Rockville, Maryland, this 17th day of December 1990.

For the Nuclear Regulatory Commission.

L.B. Marsh,

Director, Project Directorate III–1, Division of Reactor Projects III/IV/V, Office of Nuclear Reactor Regulation.

[FR Doc. 90–30078 Filed 12–21–90; 8:45 am]

BILLING CODE 7590–01–M

[Docket Nos. 72–10, 50–282–RS, 50–306–RS, ASLBP No. 91–627–01–RS]

Northern States Power Co.; Prehearing Conference

December 17, 1990.

In the Matter of: Northern States Power Company (Prairie Island Nuclear Generating Plant, Units 1 and 2).

Notice is hereby given that a prehearing conference in the above-identified proceeding, concerning the proposed materials license which, if granted, will authorize the Applicant to store spent fuel from the Prairie Island Nuclear Generating Plant, Units 1 and 2, in dry storage casks at an Independent Spent Fuel Storage Installation (ISFSI) to be constructed at the Applicant's Prairie Island Nuclear Generating Plant site, will commence at 9:30 a.m. on Tuesday, April 2, 1991, at Courtroom No. 4, United States Courthouse, 316 North Robert Street, St. Paul, Minnesota 55101. The prehearing conference will continue, to the extent necessary, on Wednesday, April 3, 1991. Among matters to be considered at the conference will be the delineation of the key issues and sub-issues in the proceeding, discovery, possibility of stipulating various facts or settlement of various issues, further scheduling for the proceeding, and such other matters as may aid in the orderly disposition of the proceeding.

Pursuant to 10 CFR 2.714(b), *on or before February 15, 1991,* any petitioner who filed a request for a hearing and a petition for leave to intervene shall file a supplement to the petition for leave to intervene which must include a list of the contentions which petitioner asks to have litigated in the hearing, and satisfies the requirements of paragraph (b)(2) of § 2.714 of the Commissions Rules of Practice. An answer addressing the admissibility of any contention set forth in a supplement to a petition to intervene shall be filed by the Licensee *on or before March 1, 1991,* and by the NRC Staff *on or before March 15, 1991.*

Members of the public are invited to attend the conference. However, limited appearance statements, as authorized by 10 CFR 2.715(a), will not be taken at this session of the proceeding. Documents related to this proceeding are on file at the Commission's Public Document Room, the Gelman Building, 2120 L Street, NW., Washington, DC 20555, and at the Commission's Local Public Document Room at the Technology & Science Department, Minneapolis Public Library, 300 Nicollet Mall, Minneapolis, Minnesota 55401.

It is so ordered.

Issued at Bethesda, Maryland, this 17th day of December, 1990.

For the Atomic Safety and Licensing Board.

Robert M. Lazo,

Chairman, Administrative Judge.

[FR Doc. 90–30079 Filed 12–21–90; 8:45 am]

BILLING CODE 7590–01–M

Northern States Power Co.; Establishment of Atomic Safety and Licensing Board: Correction

[Docket No. 72–10, 50–282/306–RS, ASLBP No. 91–627–01–RS]

In the notice published on December 14, 1990, at 55 FR 51515, the second sentence of the second paragraph should read as follows:

* * * * The proposed license would authorize the applicant to store spent fuel from the Prairie Island Nuclear Generating Plant, Units 1 and 2, in dry storage casks at an ISFSI to be constructed at the applicant's Prairie Island Nuclear Generating Plant site. (Operating Licenses DPR–2012 and 2014.)

Issued at Bethesda, Maryland, this 14th day of December 1990.

B. Paul Cotter, Jr.,

Chief Administrative Judge Atomic Safety and Licensing Board Panel.

[FR Doc. 90–30080 Filed 12–21–90; 8:45 am]

BILLING CODE 7590–01–M

SECURITIES AND EXCHANGE COMMISSION

[Rel. No. 34–28701; International Series Rel. No. 208; File No. SR–MSE–90–10]

Self-Regulatory Organizations; Midwest Stock Exchange, Inc.; Order Approving Proposed Rule Change Relating to the Listing of Index Warrants Based on the CAC–40 Index

On July 10, 1990, the Midwest Stock Exchange, Inc. ("MSE" or "Exchange") submitted to the Securities and Exchange Commission ("SEC" or "Commission"), pursuant to section 19(b) of the Securities Exchange Act of 1934 ("Act"),[1] and rule 19b–4 thereunder,[2] a proposed rule change to list warrants based on the Cotation Assistée en Continu 40 Index ("CAC–40" or "Index")—a broad-based index of French stocks traded on the Paris Bourse.[3]

The proposed rule change was published for comment in Securities Exchange Act Release No. 28309 (August 3, 1990), 55 FR 32720. No comments were received on the proposed rule change.

The Exchange proposes to list index

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[1] 15 U.S.C. 78s(b)(1) (1982).

[2] 17 CFR 240.19b–4 (1989).

[3] In France, securities may be listed on only one of seven stock exchanges. Together these bourses or stock exchanges—Paris, Bordeaux, Lille, Lyons, Marseilles, Nancy and Nantes—form a single exchange system operating under the same principles, headed by the same authorities and subject to the same rules and regulations. For purposes of calculating the CAC–40 Index, however, only securities traded on the Paris Bourse are considered. For a more complete description of the regulatory structure in France, See Securities Exchange Act Rel. No. 28544 (October 17, 1990), 55 FR 42792, at note 6 (order approving proposals by the American, New York, Philadelphia and Pacific Stock Exchanges, to trade warrants based on the CAC–40) ("CAC–40 Warrant Approval Order").

warrants [4] based on the CAC–40,[5] an internationally recognized, capitalization-weighted index consisting of 40 leading stocks listed and traded on the Paris Bourse and calculated by the SBF.[6]

The CAC–40 is calculated based on 40 French stocks chosen by the SBF to provide an indication of the performance of the French stock market.[7] In particular, the Index is designed so that the economic sectors contained in the Index receiive approximately the same weighing as in the overall French market, for both market value and trading volume.[8]

The CAC is continuously calculated using the last sale price of each of the 40 quoted stocks comprising the Index and disseminated at 30-second intervals throughout the Paris Bourse trading day from 10 a.m. to 5 p.m. (Paris time) (4 a.m. to 11 a.m. Eastern Standard Time). The Index is published daily in, among other places, the *Wall Street Journal*, as well as being available real-time on Telefax, Reuters and other market information systems which disseminate information on a minute-by-minute basis. To calculate the CAC–40, the SBF takes the sum of the market values of the 40 stocks in the Index and divides this number by a base adjusted market value or divisor. In order to provide continuity for the Index's value, the divisor is adjusted periodically to reflect events such as new issuances of stock and other capitalization changes.

In addition, whenever there is stale last sale information for a large percentage of component securities in the Index, the CAC–40 Index is replaced with an "éclaireur." [9] The "éclaireur" provides the following information as a substitute for the CAC–40 Index when the CAC–40 would not be a meaningful measure of the French equity market: (1) The number of CAC–40 component stocks still being traded; (2) the relative weight of stocks still traded, expressed as a percentage of the aggregate market capitalization of the component CAC–40 stocks; and (3) the percentage change in market capitalization of stocks still traded with respect to their market capitalization as of the last published index. The "éclaireur" has not been used often. According to the SBF, the use of the "éclaireur" has been limited to episodes of dramatic price movement, as well as cases of technical difficulty which arise to hinder the dissemination of last sale information.

The MSE proposes to trade CAC–40 warrants pursuant to the requirements approved by the Commission, which among other things, permits the MSE to list index warrants based on established market indexes, both foreign and domestic.[10] Specifically, consistent with the Index Warrant Approval Order, the Exchange represents that the CAC–40 warrant issues will conform to their respective index warrant listing guidelines.[11] The listing guidelines of the MSE require that: (1) The issuer shall have assets in excess of $100,000,000 and otherwise substantially exceed the Exchange's size and earnings requirements; (2) the term of the warrants shall be for a period ranging from one to five years from the date of issuance; and (3) the minimum public distribution of such issues shall be 1,000,000 warrants together with a minimum of 400 public holders, and have an aggregate market value of $4,000,000.

The Exchange also represents that the CAC–40 warrants will be direct obligations of their issuer subject to cash-settlement during their term, and either exercisable throughout their life (*i.e.*, American style) or exercisable only on their expiration date (*i.e.*, European style). Upon exercise, or at the warrant expiration date (if not exercisable prior to such date), the holder of a warrant structured as a "put" would receive payment in U.S. dollars to the extent that the CAC–40 Index has declined below a pre-stated cash settlement value. Conversely, holders of a warrant structured as a "call" would, upon exercise or at expiration, receive payment in U.S. dollars to the extent that the CAC–40 Index has increased above the pre-stated cash settlement value. If "out-of-the-money" at the time of expiration, the warrants would expire worthless.

Because index warrants are derivative in nature and closely resemble index options, the Exchange will impose several safeguards designed to meet the investor protection concerns raised by the trading of CAC–40 index warrants. First, the Exchange proposes to apply its options suitability standards to Index warrant recommendations. Second, discretionary orders in Index warrants must be approved on the day entered by a Senior Registered Options Principal ("SROP") or a Registered Options Principal ("ROP"). Third, the Exchange has recommended that the CAC–40

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[4] Warrants on a stock index are securities that incorporate certain characteristics of both stocks and options. Like stock, they are issued by a corporation that serves as guarantor of the warrant obligation. Like a stock index option, however, an index warrant is based on the performance of an underlying index and has a fixed expiration date. Index warrants are also cash-settled and, just as is the case when one purchases an option, the risk to a buyer of a warrant is known and limited. For a description of how index warrants are cash-settled, see *infra* text at p. 6.

[5] The Index is composed of stocks of companies from 8 different industry groups, no one of which dominates the Index, and the percentage weighing of the five largest issues, as of June 28, 1990, accounted for approximately 31.39% of the Index's value. The total capitalization of the CAC–40, as of June 28, 1990, was $166.6 billion or approximately 60% of the capitalization of the CAC–240 General Index, a benchmark of French listed-securities. In addition, the average daily trading volume during the first six months of 1990 for the five most heavily weighted stocks in the CAC was 652,990 shares collectively and 130,998 individually. The total average daily trading volume of the 40 CAC stocks for the same period was 2,874,523 shares. The Index is administered by the Scientific Advisory Commission ("SAC"), a committee composed of experts appointed by the Societe des Bourses Francaises ("SBF"). The SAC is responsible for, among other things, the calculation of the Index, as well as a review of its composition.

[6] The SBF is a "specialized financial institution," under the direction of the Conseil des Bourses de Valeurs or Stock Exchange Council. It implements decisions taken by the Stock Exchange Council, such as day-to-day administration of French securities markets, development and promotion, and provides investors and the geneal public with comprehensive information on market activities. In addition, the SBF monitors and supervises the market and exchange member firms under delegated authority by the Exchange Council. The Stock Exchange Council is the regulatory authority similar to a self-regulatory organization in the United States, charged with formulating the rules under which the French market and brokerage firms operate. The rules of the Stock Exchange Council, called the Règlement Général du Conseil des Bourses de Valeurs, set forth terms and conditions for the creation of new brokerage houses, security listings, removals from listing and suspension, and takeover bids and establish a code of conduct for exchange members. In addition, the Council ensures member compliance with its rules by bringing disciplinary action if necessary. The French regulatory body known as the Commission des Operations de Bourse ("COB") approves the rules of the Stock Exchange Council. The COB is an autonomous administrative body patterned after the Commission. It functions as the French market regulator with authority to undertake investigations, notify French judicial authorities, and levy fines.

[7] The CAC–240 General Index represents the total French equity market value. Calculations by the SBF show that the correlation of the monthly price settlement between the CAC–40 and the CAC–240 General Index is 97%. Moreover, the index's component stocks are highly capitalized as the mean and median capitalization for the 40 firms (as of June 29, 1990) was 23.44 billion French francs ($4.71 billion dollars) and 15 billion francs ($2.67 billion dollars), respectively. The U.S. dollar/French franc exchange rate used for these calculations was $.17806 per French franc on June 29, 1990.

[8] *See* CAC–40 Warrant Approval Order, 55 FR at 42793; *supra* note 5.

[9] The "éclaireur" is a collection of indicators used to show the trend of the market based on the component stocks that are actually trading. The éclaireur is disseminated at the start of each daily trading session, prior to the establishment of an initial quoted price for each component stock, and in the event that trading has been suspended in stocks representing more than 35% of the total market capitalization of the component stocks.

[10] Securities Exchange Act Rel. No. 28133 (June 19, 1990), 55 FR 26319 ("Index Warrant Approval Order").

[11] *See* MSE Article XXVIII, rule 8.

warrants only be sold to options approved accounts. Fourth, the Exchange, prior to commencement of trading of CAC–40 warrants, will distribute a circular to its membership calling attention to the specific risks associated with warrants on the CAC–40.

Finally, to ensure that there is a mechanism for sharing surveillance information with respect to the Index's component stocks, the MSE has entered into a Memorandum of Understanding with the SBF.[12] The Memorandum will allow the MSE to obtain trading data and other market-based information from the SBF regarding the component securities of the CAC–40 Index.[13] The Exchange believes that this Memorandum, together with the cooperative efforts of the SEC and the COB,[14] is an appropriate and sufficient informational sharing arrangement for surveilling trading in CAC–40 warrants on the Exchange.

The Commission finds that the proposed rule change is consistent with the requirements of the Act and the rules and regulations thereunder applicable to a national securities exchange, and, in particular, the requirements of section 6(b)(5).[15] Specifically, the Commission believes that CAC–40 warrants are innovative securities instruments that can provide investors a means by which to hedge against investment decisions made in the French equity market, and, act as a surrogate instrument for trading the French securities market.[16] In particular, CAC–40 warrants will benefit U.S. investors by allowing them to obtain differential rates of return on a capital outlay if the CAC–40 moves in a favorable direction within a specified time period. Of course, if the CAC–40 moves in the wrong direction or fails to move in the right direction, the warrants will expire worthless and the investors will have lost their entire investment. Thus, the trading of warrants on the CAC–40 Index will provide investors with a valuable hedging vehicle that should reflect accurately the overall movement of the French equity market.

The Commission also believes that the CAC–40 warrants are consistent with the guidelines set forth in the Index Warrant Approval Order. Because the CAC–40 is a broad-based Index of actively traded, highly-capitalized stocks, the trading of cash-settled warrants on the CAC–40 on the MSE does not raise unique regulatory concerns.[17] The Commission notes that the MSE rules and procedures that address the special concerns attendant to the secondary trading of index warrants will be applicable to the CAC–40 warrants. In particular, by imposing the special suitability, disclosure, and compliance requirements noted above, the MSE has addressed adequately potential public customer problems that could arise from the derivative nature of CAC–40 warrants. Moreover, the MSE plans to distribute a circular to its membership calling attention to the specific risks associated with warrants on the CAC–40 and, pursuant to the MSE listing guidelines, only substantial companies capable of meeting their warrant obligations will be eligible to issue CAC–40 warrants.

In light of the fact that the CAC–40 is a foreign stock index, the Commission believes an adequate surveillance sharing agreement between the MSE and SBF is a necessary prerequisite to deter and detect potential manipulation or other improper or illegal trading involving the warrants. To address this concern, the MSE entered into a Memorandum of Understanding with the SBF to provide for the sharing of market information related to the trading of CAC–40 warrants on the MSE.[18] Despite the surveillance sharing agreement between the MSE and SBF, however, the SBF asserts that a French blocking statute [19] restricts its ability to supply the MSE with necessary customer trading information related to trading on the Paris Bourse.[20] Therefore, in order to obtain customer information, the Commission and the COB have exchanged letters that establish a mechanism for the exchange of information, including customer information, for transaction involving a derivative security or the stocks underlying such security when that derivative security is traded in U.S. or French markets and the underlying securities are traded in the other country's markets.[21]

This SEC/COB letter exchange confirms that the SEC will be able to secure information from the COB that the MSE may not be able to obtain from the SBF, and thus ensures that an investigation can occur with access to all necessary surveillance information.[22] Accordingly, the Commission believes the arrangement made pursuant to the SEC/COB exchange of letters, together with the agreement consummated by the Exchange with the SBF, is adequate to allay Commission concerns regarding the MSE's ability to obtain information necessary to take appropriate regulatory action regarding alleged manipulation or

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[12] *See* Memorandum of Understanding Between the MSE and the SBF Concerning the Listing of Securities Linked with an Index and the Furnishing of Information for the Purpose of Regulation and Enforcement between the MSE and SBF, dated October 12, 1990 ("Memorandum").

[13] Specifically, the Memorandum provides for the exchange of information concerning any security traded through the facilities of the MSE, any security underlying a derivative instrument traded through the facilities of the MSE, or any derivative instrument based upon or including a security traded through the facilities of the MSE. Accordingly, the Memorandum allows for the provision of information relating to the CAC–40 warrants or any securities underlying the CAC–40 warrants. In addition, this Memorandum obligates the Exchange and SBF to resolve in "good faith" any disagreements regarding requests for information.

[14] *See infra* notes 19–22 and accompanying text for a description of an agreement reached between the SEC and the COB to provide necessary surveillance information despite the existence of a French Blocking Statute that would otherwise have circumvented the MSE's surveillance of trading in CAC–40 warrants.

[15] 15 U.S.C. 78f(b)(5) (1982).

[16] Pursuant to section 6(b)(5) Of the Act the Commission must predicate approval of any new securities product upon a finding that the introduction of such product is in the public interest. Such a finding would be difficult with respect to a warrant that served no hedging or other economic function, because any benefits that might be derived by market participants likely would be outweighed by the potential for manipulation, diminished public confidence in the integrity of the markets, and other valid regulatory concerns.

[17] The Commission has previously examined the CAC–40 in the context of proposed rule changes submitted by the American, New York, Pacific and Philadelphia Stock Exchanges, as well as the Chicago Board Options Exchange to list and trade Index warrants based on the CAC–40. At that time, the Commission found that the CAC–40 was not readily susceptible to manipulation because of the representative nature of the various industry segments included in the Index, the relative weighted value of the Index's component stocks, and the substantial capitalization and trading volume of the component stocks. *See* CAC–40 Index Warrant Approval Order, *supra* note 3 and Securities Exchange Act Rel No. 28587 (October 30, 1990), 55 FR 46587 ("CBOE CAC–40 Warrant Approval Order").

[18] *See supra* notes 12–14 and accompanying text.

[19] A blocking statute prohibits the disclosure, inspection, copying or removal of documents located in the enacting state in compliance with orders of foreign authorities. *See*, The 1980 French Law on Documents and Information, Law No. 80–538 [1980] J.O. 1799.

[20] In this regard, the SBF asserts that it does not have the legal capacity to obtain specific customer information, but instead, must rely on the COB. The COB is prohibited from furnishing customer information to a non-governmental body, such as the MSE. As described below, pursuant to a letter exchange between the SEC and the COB, the COB confirms that it will furnish customer information directly to the Commission.

[21] *See* letter from Richard Ketchum, Director, Division of Market Regulation, SEC, to Patrick Mordacq, Secretary General, COB, dated September 18, 1990; and letter from Patrick Mordacq, Secretary General, COB, to Richard Ketchum, Director, Division of Market Regulation, SEC, dated September 18, 1990.

[22] The SEC entered into an Administrative Agreement with the COB on December 14, 1989. *See*, CAC–40 Warrant Approval Order for a description of this agreement.

other trading abuses between markets involving the trading of CAC warrants.

Finally, the Commission believes that trading in CAC–40 warrants will not have an adverse impact on U.S. financial markets. In fact, the Commission believes that CAC–40 warrants will benefit U.S. markets by providing U.S. issuers more flexibility in raising capital at potentially lower costs and allowing U.S. investors an opportunity to better hedge against stock market fluctuations in France.

It therefore is ordered, pursuant to section 19(b)(2) of the Act,[23] that the proposed rule change (SR–MSE–90–10) is approved.

For the Commission, by the Division of Market Regulation, pursuant to delegated authority.[24]

Dated: December 13, 1990.

Jonathan G. Katz,

Secretary.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–29952 Filed 12–21–90; 8:45 am]

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[Rel. No. 34–28703; File No. SR–NYSE–90–38]

Self-Regulatory Organizations; Filing of Proposed Rule Change by the New York Stock Exchange, Inc., Relating to NYSE Equity Receipts

Pursuant to section 19(b)(1) of the Securities Exchange Act of 1934 ("Act"), notice is hereby given that on August 27, 1990, the New York Stock Exchange, Inc. ("NYSE") filed with the Securities and Exchange Commission ("Commission") the proposed rule change as described in Items I, II, and III below, which Items have been prepared by the self-regulatory organization. The Commission is publishing this notice to solicit comments on the proposed rule change from interested persons.

I. Self-Regulatory Organization's Statement of the Terms of Substance of the Proposed Rule Change

The NYSE proposes to establish rules to permit trading in NYSE Equity Receipts and to prescribe trading in NYSE Equity Receipts based on the NYSE Composite Index.[1] The NYSE proposes to establish new rules 796A *et. seq.* to accommodate trading in NYSE Equity Receipts. NYSE Equity Receipts are similar to the "index participations" that the Commission approved in 1989. The text of the proposed rules to introduce equity receipt trading are as follows.

Italics in existing rules indicates language added; [brackets] indicate language deleted.

Equity Receipt Rules

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Rule 796L (Open Orders on "Ex-Date")

Margin Accounts

Rule 431. (a) through (d)—No change.

Exceptions to rule. (e) The foregoing requirements of this Rule are subject to the following exceptions:

(1) through (8)—No change.

(9) *Equity Receipts. The equity to be maintained in margin accounts of customers having positions in equity receipts, whether members, partners of members, member firms, member corporations or stockholders therein or non-members, shall be as follows:*

1. 25% of the market value of all "long" equity receipt positions in the account plus:

2. 30% of the market value, in cash, of each "short" equity receipt position in the account.

However, no margin need be required in respect of an equity receipt carried "short" in a customer's account when, prior to creating the "short" position or promptly thereafter, the customer has executed and delivered to the member organization carrying the account an escrow receipt meeting the requirements of rule 1909 of The Options Clearing Corporation. Other Provisions

(f)—No change.

* * * *Supplementary Material*—No change.

Rights and Obligations of Holders and Writers

702. (a)—No change.

(b) Neither the Exchange, [nor] any [of its] affiliate[s], *nor any Index Licensor or Administrator* guarantees the timeliness, sequence, accuracy or completeness [either] of index [values or of last sale] information [from which the index values are calculated or which otherwise relates to any underlying security]. Neither the Exchange, [nor] any [of its] affiliate[s], *nor any Index Licensor or Administrator shall have any liability for* [shall be liable to any person for]

(i) Any inaccuracy[ies or], error[s] *or delay* in, or omission[s] of *or from, (A)* any *index* [such values or] information[,] *or (B) the collection, calculation, compilation, maintenance, reporting or dissemination of any index or index information, or*

(ii) [Any delays or errors in the calculation, transmission or delivery of any value or of any part of any such information, or (iii)] any loss, [or] damage[s], *claim or expense* arising from or occasioned by *(A)* any such inaccuracy[ies], error[s], [omissions or] delay[s or by reason of] *or omission. (B)* non-performance, or *(C)* [of] interruption in the calculation or dissemination of *index* [any such value or] information, *resulting* either *from* [due to] any negligent act or omission by the Exchange, [or] any [of its] affiliate[s], *or any Index Licensor or Administrator* or *from any act, condition or* [due to any] cause beyond the reasonable control of the Exchange, [or] any [of its] affiliate[s], *or any Index Licensor or Administrator*, including, but not limited to, flood, extraordinary weather conditions, *earthquake* or other act of God, fire, war, insurrection, riot, *labor dispute* [strike], accident, action of government, communications or power failure, or equipment or software malfunction.

(c) Neither the Exchange, any affiliate, nor any Index Licensor or Administrator (i) makes any express or implied warranty as to results that any person or party may obtain from using any index or index information for trading or any other purpose or (ii) makes any express or implied warranty, including any warranty of merchantability or fitness for a particular purpose or use, with respect to any index or index information.

* * * Supplementary Material:

.10 For the purposes of this Rule, "Index Licensor or (and) Administrator" includes any person who:

(a) Licenses to the Exchange the right to use an index:

(b) Collects, calculates, complies, reports and/or maintains an index or index information:

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[23] 15 U.S.C. 78s(b)(2) (1982).

[24] 17 CFR 200.30–3(a)(12) (1989).

[1] "NYSE Equity Receipt" is a trademark, and "NYSE Composite Index" is a registered service mark, of the NYSE.

(c) Provides facilities for the dissemination of index information; and/or

(d) Is responsible for any of the activities described above.

.20 For the purposes of this Rule, "index information" includes (a) Information relating to the inclusion and relative representation of stocks in an index, index values, current index group values and the last sale prices of an index's component stocks and (b) other information relating to an index.

Equity Receipt Rules

Equity Receipts: Applicability and Definitions

Applicability—Rule 796A. (a) Rules 796A through 796N shall be applicable to equity receipts. Except to the extent that specific provisions in those Rules govern, the provisions of the Constitution and all other rules and policies of the Board of Directors shall apply to the trading on the Exchange of equity receipts, subject to paragraph (a) of rule 700 (Applicability, Definitions and References) and rule 750 (Rules of General Applicability) as this paragraph applies those Rules to equity receipts. The following Option Rules, as they apply to trading in broad index stock group options, shall apply to equity receipt trading:

700 (Applicability, Definitions and References) except paragraphs (b)(17) and (b)(24A)
701 (Option Contracts to Be Traded) (paragraph (d) only)
702 (Rights and Obligations of Holders and Writers) as provided in paragraph (c) of this Rule 796A
704 (Position Limits) as provided in Rule 796D
705 (Exercise Limits) as provided in Rule 796E
706 (Reporting of Options Positions) as provided in Rule 796F
707 (Liquidation of Positions)
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709 (Other Restrictions on Exchange Option Transactions and Exercises)
717 (Trading Rotations, Halts and Suspensions)
720 (Registration of Options Principals)
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726 (Delivery of Options Disclosure Document and Prospectus)
730 (Statement of Accounts)
732 (Customer Complaints)
750 (Rules of General Applicability) as provided in paragraph (a)(5) of this rule 796A
750A (Option Specialist Reallocation)
753 (Acceptance, Priority and Precedence of Options Bids and Offers)
754 (Units of Trading)
755 (Floor Reports of Exchange Option Transactions)
756 (Transactions Off the Exchange)
757 (Securities Accounts and Orders of Competitive Options Traders and Specialists)
758 (Competitive Options Traders) except Supplementary Material .10
760 (General Comparison and Clearance Rule)
761 (Responsibility of Clearing Members of Exchange Option Transactions)
762 (Filing of Trade Information)
763 (Contract Lists and Uncompared Trade List)
764 (Verification of Contract Lists and Reconciliation of Uncompared Trades)
765 (Unreconciled Trade Report)
766 (Reporting of Compared Trades to Options Clearing Corporation)
767 (Maintaining Office and Filing Signatures)
770 (Resolution of Uncompared Trade)
771 (Failure to Pay Premium) as provided in paragraph (a)(6) of this Rule 796A
772 (Option Contracts of Suspended Members)
780 (Exercise of Option Contracts) (paragraph (a) only)
792 (Days and Hours for Options Trading)
793 (Furnishings of Books, Records and Other Information)
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For the purposes of the application of those Option Rules to equity receipts.

(1) References in those Option Rules to "option (contract)" and "(broad) index stock group option (contract)" shall be deemed to refer to "equity receipts";

(2) References in those Option Rules to a "call" or "put" shall be deemed to refer to a "long index participation position" or "short index participation position", respectively;

(3) References in those Option Rules to a series, class or type of option shall be deemed to refer to equity receipts on the same underlying index stock group;

(4) References in those Option Rules to another incorporated Rule shall be deemed to refer to the incorporated Rule as modified by this 796-series of Rules;

(5) References to "100 contracts" and "one-eighth point", as they appear in Supplementary Material .95 to paragraph (h) of rule 750, shall read "100 units" and "such number of points as the Exchange may from time to time specify", respectively; and

(6) References to "premium" or "amount of the premium" in rule 771 shall read "amount".

Definitions. (b) The following terms as used in the 796 series of Rules shall have the meanings herein specified.

(1) *Cash-out index group value*—The term "cash-out index group value" means the current index group value as reported at a time or times specified by the Exchange for determining the amount that an equity receipt purchaser receives for the equity receipt upon his or its exercise of the cash-out privilege.

(2) *Current index group value*—The term "current index group value" means $1.00 mulitplied by the current value reported for the index that is derived from the current market prices of the stocks in the index stock group underlying an equity receipt.

(3) *Delivery unit*—The term "delivery unit" means the number of equity receipts that the Exchange may specify as the minimum number in respect of which purchasers may exercise the physical delivery privilege.

(4) *Equity receipt*—The term "equity receipt" means a security of indeterminate duration that is based on the current value of the index that is derived from the market prices of the stocks in an index stock group and that pays its purchasers an amount equal to a proportionate share of the dividends declared on the underlying securities.

(5) *Exercise date*—The term "exercise date" means the day each quarter of the year when a purchaser may obtain either the current index group value for an equity receipt or physical delivery of the shares of the component stocks in the index stock group underlying an equity receipt. The Exchange will specify the exercise date for each quarter before the beginning of the quarter.

(6) *Floor*—The terms "Floor" or 'On the Floor" have the meanings that rule 6 (Floor) and Supplementary Material .20(a) of rule 112 (Competitive Traders), respectively, assign to those terms.

(7) *Index Licensor or (and) administrator*—The term "Index Licensor or Administrator" has the meaning that Supplementary Material .10 of rule 702 assigns to it and, in addition, includes any person who provides, calculates and/or reports the cash-out index group value, dividend payout dates or the proportionate share of dividend equivalents payable to equity receipt purchasers.

(8) *Physical delivery facilitator*—The term "physical delivery facilitator" means a member or member organization that the Exchange designates to make physical delivery at exercise date of the shares of the component stocks of an equity receipt's underlying index stock group to purchasers who exercise the delivery privilege. Physical delivery facilitators are required to make physical delivery only when the number of delivery units for which purchasers have requested physical delivery exceeds the number of delivery units that sellers have offered for physical delivery.

(9) *Purchaser*—The term "purchaser" means the holder of a long position in an equity receipt.

(10) *Seller*—The term "seller" means the holder of a short position in an equity receipt.

The options clearing corporation rules. (c) Paragraph (a) of rule 702 as incorporated into these Equity Receipt Rules applies the rules of The Options Clearing Corporation to equity receipts. Those rules shall be deemed to so apply to equity receipts in the same manner as they apply to "index participations" (as The Options Clearing Corporation rules define and refer to that term).

Limitation on liability. (d) Paragraph (b) of rule 702 exculpates the Exchange, any affiliate, and any Index Licensor or Administrator from certain listed events resulting from certain enumerated acts, omissions, conditions or causes. For the purposes of the incorporation of rule 702 into this 796 series of Rules, that list of events shall also include: (D) Collection, calculation or dissemination of cash-out index group values, (E) trading on dividend payout dates and (F) computation of proportionate dividend equivalent payouts. Furthermore, Supplementary Material .20 of rule 702 defines "Index Information". For the purposes of the incorporation of Rule 702 into this 796 series of Rules, that definition shall also include: cash-out index group values, dividend payout dates, proportionate dividend equivalent payments and other relevant dividend information.

Designation of an Index

Rule 796B. The Exchange may determine to base equity receipts on such one or more index stock groups as it may designate. As to any such index stock group, the Exchange or the Index Licensor or Administrator having a proprietary interest in and authorized use of the index may select the group of stocks included in the index stock group and, in its discretion, may from time to time revise the stocks included in the group, or change the number of stocks comprising the group, as it may deem necessary or appropriate to maintain the quality and character of the index stock group.

Dissemination of Information

Calculation and reporting—Rule 796C. (a) The Exchange shall cause to be calculated and reported at specified intervals the current index group value of each index underlying an equity receipt during each day the Exchange is open for trading, and shall make available each day's cash-out index group value for that underlying index promptly after the calculation is available.

Method of calculation. (b) The Exchange shall maintain information identifying the component stocks of each index stock group on which an equity receipt is based and the method used to determine the current index group value and the cash-out index group value.

Position Limits

Rule 796D. In determining compliance with rule 704 (Position Limits), equity receipts shall be subject to a position limit (whether short or long) of 30 million equity receipts with respect to any particular underlying index stock group.

Exercise Limits

Rule 796E. In determing compliance with rule 705 (Exercise Limits), exercise limits applicable to equity receipts shall be equivalent to the position limits set forth in rule 796D (Position Limits).

Reporting of Equity Receipt Positions

Rule 796F. In determining compliance with rule 706 (Reporting of Options Positions), each member or member organization shall file with the Exchange a report with respect to each account in which the member or member organization has an interest, each account of a member, allied member or employee of such member or member organization, and each customer account, which has established an aggregate position (whether long or short) of 200,000 equity receipts covering the same underlying index stock group.

Exercise Privilege and Priority Consideration

Exercise privilege—Rule 796G. (a) On each quarterly exercise date, a purchaser of one or more equity receipts may exercise the rights

(i) To sell the contracts to The Options Clearing Corporation for the cash-out index group value; and/or

(ii) To exchange one or more delivery units of an equity receipt (but not any partial delivery unit) for the proportionate number of shares of each component stock included in the index stock group underlying the equity receipt.

Seller's obligation. (b) If a purchaser's cash-out exercise notice is assigned to a seller of one or more equity receipts, the seller must deliver the cash-out index group value to The Options Clearing Corporation. If a purchaser's delivery exercise notice is assigned to a seller of one or more delivery units, the seller must deliver to The Options Clearing Corporation the proportionate number of shares of each of the equity receipt's underlying component stocks for the number of equity receipts that comprise the delivery unit(s).

Priority consideration. (c) A seller who makes an effective tender of a priority-consideration notice pursuant to Rule 796H (Notice and Allocation Procedures) will receive priority consideration from The Options Clearing Corporation in the assignment of exercise notices.

Delivery privileges. (d) A purchaser's exercise of the delivery privilege pursuant to paragraph (a) of this Rule and a seller's delivery obligation pursuant to paragraph (b) of this Rule are subject to the following:

(i) If the purchaser elects to receive physical delivery for more than one delivery unit, the number of shares of each stock to be delivered shall be calculated separately for each unit.

(ii) If the number of shares of a particular stock would amount to less than ten full shares, the purchaser shall receive the cash value of the shares rather than the shares themselves.

(iii) If the proportionate representation of a stock in the delivery unit includes a partial share, the purchaser shall receive the cash value of the partial share rather than the partial share itself.

(iv) If any component stock does not open for trading on the primary market for the stock on the trading day on which the purchaser is to receive physical delivery, the cash value of the proportionate number of shares of the stock will serve as an acceptable substitute for the shares themselves.

(v) If the Exchange or The Options Clearing Corporation determines that any component stock:

(A) Is ineligible for secondary trading under the securities laws of any United States jurisdiction;

(B) Is ineligible for settlement under the rules of a correspondent clearing corporation; or

(C) Is subject to extraordinary circumstances that make delivery of the stock impossible or impractical.

then the purchaser shall receive the cash value of the proportionate number of shares of the stock, rather than the shares themsleves.

(vi) If an equity receipt's physical delivery facilitator is no longer authorized to function as such (whether because the necessary agreement is no longer in effect, because the facilitator is no longer in good standing as a clearing member of The Options Clearing Corporation or otherwise) and the Exchange has not designated a substitute or replacement physical delivery facilitator, then The Options Clearing Corporation shall pay the requesting purchasers the cash value of the shares comprising the delivery unit. The Options Clearing Corporation shall only do so to the extent that sellers do not make available the number of delivery units that purchasers requested for physical delivery.

(vii) If a purchaser is to receive the cash value of shares rather than physical delivery, the cash value shall be established by using the same prices for the shares as are used in calculating the equity receipt's cash-out index group value.

(viii) If a purchaser exercises the delivery privilege, he or it shall pay to the party making physical delivery such delivery fee as the Exchange may from time to time specify.

Notice and Allocation Procedures

Exercise notices. 796H. (a) The cash-out or delivery privilege may only be exercised by the tender of a notice to that effect (an "exercise notice") to The Options Clearing Corporation.

Priority-consideration notices. (b) A seller may receive priority consideration in the assignment of either cash-out or delivery exercise notices if a notice of the seller's desire to receive priority is tendered to The Options Clearing Corporation (a "priority-consideration notice"). The notice is only effective for the business day on which The Options Clearing Corporation receives it. If The Options Clearing Corporation receives effective priority-consideration notices from sellers in respect of a greater number of equity receipts than are represented by purchasers' exercise notices. The Options Clearing Corporation will allocate the exercise notices among those sellers pursuant to paragraph (f) of this rule 796H.

Notice specificity. (c) Each exercise or priority-consideration notice must specify whether it applies in respect of physical delivery or cash-out.

Notice deadlines. (d) Members and member organizations shall establish fixed procedures as to the latest hour at which they will accept exercise and priority-consideration notices from their customers.

Notices to the options clearing corporation. (e) Only the clearing member in whose account with The Options Clearing Corporation the equity receipt position is carried may tender an exercise or priority-consideration notice to The Options Clearing Corporation in respect of that position.

Allocation procedures. (f) Each member organization shall establish fixed procedures for allocating the exercise notices that The Options Clearing Corporation has assigned to it among those of its customers' accounts that carry short positions in the equity receipt. The procedures shall assure that sellers who have tendered an effective priority-consideration notice shall receive priority consideration and assignment of exercise notices over other sellers who are customers of the member organization. The member organization shall make the allocations on a "first-in, first-out" or automated random selection basis that the Exchange has approved, or on a manual random selection basis that the Exchange has specified. Each member organization shall inform its customers in writing of the method it uses to allocate exercise notices to its customers' accounts, explaining its manner of operation and the consequences of that method. Unless otherwise specified by the member organization, the allocation procedures established by a member organization for broad index stock group options will be deemed to apply to the allocation of exercise notices for equity receipts.

Approval of allocation procedures. (g) Each member organization shall report its proposed method of allocation to the Exchange and shall obtain the Exchange's prior approval of the method. No member organization shall change its method of allocation until the Exchange has approved the change.

Records of allocation procedures. (h) Each member organization shall preserve for three years sufficient workpapers and other documentary materials to establish the manner in which the member organization has actually allocated exercise notices.

Applicability of SRO rules. (i) To be effective, any notice that this Rule requires must comply with such time parameters and other requirements as the rules and policies of the Exchange and The Options Clearing Corporation shall prescribe. Similarly, all procedures that this Rule requires members and member organizations to establish must comport with the rules and policies of the Exchange and The Options Clearing Corporation.

Payment or Delivery Upon Exercise

Delivery upon assignment of physical delivery notices—Rule 796I. (a) A seller who is assigned a physical delivery exercise notice for a delivery unit shall make physical delivery of the shares of the stocks comprising the underlying index stock group, and shall pay any requisite cash amounts, to The Options Clearing Corporation as determined by and in accordance with paragraph (d) of rule 796G (Exercise Privilege and Priority Consideration). Assignments of physical delivery exercise notices shall be made only on the basis of whole delivery units. Any portion of a seller's short position in an equity receipt that an assignment of a physical delivery exercise notice does not liquidate shall be subject to assignment of a cash-out exercise notice as provided in paragraph (b) of this Rule.

Payment upon assignment of cash-out notice—(b) A seller who is assigned a cash-out exercise notice in respect of an equity receipt pursuant to paragraph (b) of rule 796G (Exercise Privilege and Priority Consideration) shall pay to The Options Clearing Corporation the cash-out index group value of the equity receipt so assigned.

Physical Delivery Facilitators

Obligations of physical delivery facilitators. Rule 796J. (a) In the event that the number of delivery units of a particular equity receipt for which exercising purchasers have requested physical delivery exceeds the number of delivery units of that equity receipt that sellers have made available, The Options Clearing Corporation may instruct such physical delivery facilitator as the Exchange may designate to deliver to purchasers exercising the delivery privilege the requisite number of shares of each component stock, as calculated in accordance with paragraph (d) of rule 796G (Exercise Privilege and Priority Consideration). The physical delivery facilitator shall do so in accordance with the rules and procedures of The Options Clearing Corporation.

Designation of physical delivery facilitators. (b) For each "kind" of equity receipt traded on the Exchange, the Exchange may designate one or more member organizations from among those making application for the privilege to perform the functions of physical delivery facilitator as provided in paragraph (a) of this Rule. (Equity receipts are of a "kind" if they are based on the same underlying index stock group.) The Exchange may designate the specialist unit for a kind of equity receipt as its physical delivery facilitator.

Bids and Offers

Rule 796K. All bids and offers made on the trading floor for equity receipts (a) shall be deemed to be for one unit of trading unless a specified greater number is expressed in the bid or offer and (b) shall be expressed in such terms as the Exchange may specify (e.g., in terms of dollars and fractions, or dollars and decimals, for one equity receipt). A bid or offer for more than a unit of trading of equity receipts shall be deemed to be for the amount specified in the bid or offer or for a smaller number of units of trading. The unit of trading in equity receipt shall be 100 equity receipts unless otherwise designated by the Exchange.

Open Orders on "Ex-Date"

Rule 796L. Open orders for one or more equity receipts held by members or member organizations prior to the effective date of a dividend adjustment by The Options Clearing Corporation to the terms of the equity receipt pursuant to the rules of The Options Clearing Corporation shall be adjusted on the

"ex-date" by such amount as The Option Clearing Corporation may specify, unless the customer otherwise instructs.

II. Self-Regulatory Organization's Statement of the Purpose of, and Statutory Basis for, the Proposed Rule Change

In its filing with the Commission, the self-regulatory organization included statements concerning the purpose of and basis for the proposed rule change and discussed any comments it received on the proposed rule change. The text of these statements may be examined at the places specified in Item IV below, and is set forth in sections (A), (B) and (C) below.

A. Self-Regulatory Organization's Statement of the Purpose of, and the Statutory Basis for, the Proposed Rule Change

(1) *Purpose*—NYSE is proposing to list and trade NYSE Equity Receipts. Initially, NYSE proposes to trade equity receipts based on the NYSE Composite Index. NYSE is considering trading equity receipts on another capitalization-weighted, widely-disseminated stock index that it has not yet identified. NYSE Equity Receipts will allow investors to participate fully in any appreciation (or decline) in the value of the portfolio of stocks comprising the underlying index, while enjoying the lower transaction costs associated with cash-settled index instruments. Similarly, investors holding short positions in these securities will experience approximately the same economic results as that of holding short positions in the underlying stocks.

General description. NYSE Equity Receipts will permit holders to own a security that is designed to reflect the principal characteristics of ownership of the complement of stocks whose values comprise the underlying indexes, but that does not require the actual purchase or sale of shares of those stocks. An NYSE Equity Receipt will not have a specific expiration date, but instead will have a perpetual life, subject to the right of the holder of a "long" position in an NYSE Equity Receipt to elect once each quarter (1) To cash-out at the then current index value or (2) to receive physical delivery of shares of the underlying stocks. NYSE Equity Receipts will be traded like other equity securities and transaction reports will be widely disseminated. Trading will take place on the NYSE's stock floor.

Cash-out privilege. NYSE anticipates that investors will typically close out long or short positions in the securities by engaging in offsetting purchase or sale transactions. However, as indicated above, the holder of a long position will also have a quarterly "cash-out privilege" opportunity. In the event of a cash-out, settlement will be effected by cash payment to the holder from a person holding a short position. The amount of the payment will equal the index value on the "cash-out" date times a multiplier established by NYSE. Cash-outs by holders of long positions will be assigned among holders of short positions in the same manner as the assignment of stock option and index option exercises.

Delivery privilege. In addition to the cash-out privilege, the holder of a long position of 60,000 equity receipts (approximately $1 million) will also have a quarterly "delivery privilege". This permits the holder to receive actual physical delivery of shares of the component stocks of the underlying index stock group upon exercise of 60,000 equity receipts (or a multiple thereof). The exercising holder will receive cash in lieu of physical delivery in respect of fractional shares and shares otherwise deliverable in quantities of fewer than 10 shares. NYSE will designate a "physical delivery facilitator" to deliver shares when holders of long positions elect to receive physical delivery of a greater number of equity receipts than holders of short positions are willing to deliver.

The physical delivery feature provides holders of large positions in equity receipts with greater market and investment flexibility, particularly in conjunction with other hedging vehicles. It provides an alternative method for institutional investors to acquire a "market basket" of securities that replicates a widely-disseminated index. Similarly, some institutional investors holding short equity receipt positions may find it attractive to make physical delivery to holders of long positions. While NYSE believes that a physical delivery feature adds to the attractiveness and flexibility of equity receipts, it does not anticipate that the number of exercises for physical delivery will be so great as to have a significant impact on market prices for individual stocks.

Exercise times. Holders of long positions will have the opportunity to elect to cash-out or to receive physical delivery once each quarter on the day coinciding with "triple-witching" expiration date on the third Friday of March, June, September and December. The deadline for exercising the privilege will be 4:15 p.m. on the business day immediately prior to the "triple-witching" expiration date. In keeping with NYSE's long-standing position regarding the desirability of basing the pricing of expiring index derivatives on the opening, cash-out index values will be based on prices on the day after the date of exercise of the cash-out privilege. The cash-out and physical delivery features assure that the price of equity receipts will closely track the value of the underlying index stock group.

Dividend equivalents. Holders will be entitled to receive, and persons holding short positions will be required to pay, payments on a quarterly or semi-annual basis (as determined by NYSE at the time of issuance) equivalent to the amount of dividends declared during such period by the issuers of the underlying index stocks. This will be accomplished by The Options Clearing Corporation crediting clearing member accounts in respect of holders, and debiting the accounts in respect of persons who are short as of the third Friday of March, June, September and December, a proportionate amount of any regular cash dividends declared on the underlying stocks. Holders will have no voting or other shareholders rights normally accorded to holders of the underlying stocks.

Margin. NYSE proposes to permit purchasers and sellers to margin NYSE Equity Receipts substantially like common stock, with purchasers permitted to borrow up to 50 percent of the current market value of the NYSE Equity Receipt, and sellers required to post margin of 150 percent of the current market value, as required by Regulation T of the Federal Reserve Board. Maintenance margin will be 25 percent of the market value of all long equity receipt positions and 30 percent of the market value, in cash, of short equity receipt positions.

Transfer. The securities will be held and transferred by book entry only. No certificates representing ownership will be issued; instead, records of the clearing corporation and clearing members, customer confirmations and account statements will provide evidence of a position in an NYSE Equity Receipt.

Applicability of options rules. Because these securities share many characteristics with broad-based index options, NYSE has been able to apply most of its index options rules to them, including rules related to options sales practices. Application of the options sale practice rules will help assure that the characteristics and risks associated with the equity receipts are adequately disclosed to investors.

Unit of trading. Each NYSE Equity Receipt based upon the NYSE Composite Index will represent 1/10 (i.e., the index multiplier) times the current index value. The standard unit of trading in the securities will be 100 equity receipts. Bids and offers will be expressed in fractions, with a minimum variation of 1/64th of a point. However, NYSE may later determine that bids and offers should be expressed in decimals.

(2) *Statutory basis*—The proposed rule change is consistent with section 6(b) of the Securities Exchange act of 1934 in general and furthers the objective(s) of section 6(b)(5) in particular in that the proposed rule change is designed to prevent fraudulent and manipulative acts and practices, to facilitate transactions in securities, to remove impediments to and perfect the mechanism of a free and open market and to protect investors and the public interest.

B. Self-Regulatory Organization's Statement on Burden on Competition

The proposed rule change will impose no burden on competition.

C. Self-Regulatory Organization's Statement on comments on the Proposed Rule Change Received from Members, Participants or Other

No written comments were solicited or received with respect to the proposed rule change.

III. Date of Effectiveness of the Proposed Rule Change and Timing for Commission Action

Within 35 days of the date of publication of this notice in the **Federal Register** or within such longer period (i) As the Commission may designate up to 90 days of such date if it finds such longer period to be appropriate and publishes its reasons for so finding or (ii) as to which the self-regulatory organization consents, the Commission will:

(A) By order approve such proposed rule change, or

(B) Institute proceedings to determine whether the proposed rule change should be disapproved.

IV. Solicitation of Comments

Interested persons are invited to submit written data, views and arguments concerning the foregoing. Persons making written submissions should file six copies thereof with the Secretary, Securities and Exchange Commission, 450 Fifth Street NW., Washington, DC 20549. Copies of the submission, all subsequent amendments, all written statements with respect to the proposed rule change that are filed with the Commission, and all written communications relating to the proposed rule change between the Commission and any person, other than those that may be withheld from the public in accordance with the provisions of 5 U.S.C. 552, will be available for inspection and copying in the Commission's Public Reference Section, 450 Fifth Street NW., Washington, DC 20549. Copies of such filing will also be available for inspection and copying at the principal office of the above-mentioned self-regulatory organization. All submissions should refer to File No. SR–NYSE–90–38 and should be submitted by January 11, 1991.

For the Commission by the Division of Market Regulation, pursuant to delegated authority.

Dated: December 14, 1990.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–29953 Filed 12–20–90; 8:45 am]

BILLING CODE 8010–01–M

[Release No. 35–25214]

Filings Under the Public Utility Holding Company Act of 1935 ("Act")

December 14, 1990.

Notice is hereby given that the following finding(s) has/have been made with the Commission pursuant to provisions of the Act and rules promulgated thereunder. All interested persons are referred to the application(s) and/or declaration(s) for complete statements of the proposed transaction(s) summarized below. The application(s) and/or declaration(s) and any amendments thereto is/are available for public inspection through the Commission's Office of Public Reference.

Interested persons wishing to comment or request a hearing on the application(s) and/or declaration(s) should submit their views in writing by January 7, 1991 to the Secretary, Securities and Exchange Commission, 450 5th Street, NW., Washington, DC 20549, and serve a copy on the relevant applicant(s) and/or declarant(s) at the address(es) specified below. Proof of service (by affidavit or, in the case of an attorney at law, by certificate) should be filed with the request. Any request for hearing shall identify specifically the issues of fact or law that are disputed. A person who so requests will be notified of any hearing, if ordered, and will receive a copy of any notice or order issued in the matter. After said date, the application(s) and/or declaration(s), as filed or as amended, may be granted and/or permitted to become effective.

Maine Yankee Atomic Power Company (70–7783)

Maine Yankee Atomic Power Compay ("Maine Yankee"), Edison Drive, Augusta, Maine 04330, an indirect nuclear generating subsidiary of Northeast Utilities and of New England Electric System, both registered holding companies, has filed a declaration with this Commission under sections 6(a) and 7 of the Act and Rule 50(a)(5) thereunder.

Maine Yankee proposes to issue and sell, no later than December 31, 1993, short-term notes ("Notes") under current bank lines of credit, and/or commercial paper ("Commercial Paper") up to an aggregate amount at any one time outstanding of $21 million. The Commercial Paper will mature in nine months or less and will be issued pursuant to an exception from competitive bidding through dealers in commercial paper and sold to institutional investors.

The effective interest cost of borrowings from such banks will not exceed the effective interest cost of borrowings at the prime rates as in effect from time-to-time at such banks. Commitment fees will not excees ⅜ of 1% of the lines of credit from such banks.

The Commercial Paper may be backed by Maine Yankee's available lines of credit, revolving credit agreements or other liquidity or credit enhancement devices, including letters of credit or insurance. Maine Yankee will pay a fee to the dealers in the Commercial Paper, estimated to be ⅛ of 1% per annum, on a discount basis, of the amounts borrowed, as compensation for their services with regard to the issuance of the Commercial Paper. The interest rate on the Commercial Paper will vary depending upon the interest rates prevailing in the relevant market at the time of issuance.

Proceeds from the sale of the Notes and Commercial Paper will be used to finance capital costs of Maine Yankee's nuclear powered electric generating plant in Wiscasset, Maine, for working capital, and for other general corporate purposes. In addition, NU proposes to make a capital contribution of $2.8 million to Rocky River for relocation expenses.

Southern Electric Generating Co. et al. (70–7818)

Southern Electric Generating Company ("SEGCO") and the equal holders of 100% of its outstanding common stock, Alabama Power Company ("Alabama"), both located at

600 North 18th Street, Birmingham, Alabama 35291, and Georgia Power Company ("Georgia"), 333 Piedmont Avenue, NE., Atlanta, Georgia 30308, subsidiaries of The Southern Company, a registered holding company, have filed an application-declaration under sections 6(a), 7, 9(a), 10 and 12(b) of the Act and Rules 45 and 50(a)(5) thereunder.

SEGCO is the owner of four units of the Ernest C. Gaston steam plant ("Plant") near Wilsonville, Alabama. Alabama, as agent of SEGCO, operates the Plant pursuant to the contract between SEGCO and Alabama. By agreement dated December 14, 1972, between The Industrial Development Board of the Town of Wilsonville, Alabama ("Board") and SEGCO, the Board agreed to issue its pollution control revenue bonds for the purpose of paying the cost of the construction and equipping of pollution control facilities at the Plant ("Project").

SEGCO proposes to enter into an amendment to an agreement ("Additional Agreement") with the Board, previously authorized by order of the Commission dated February 19, 1975, May 30, 1975 and September 21, 1982 (HCAR Nos. 18819, 19015 and 22641) (Collectively, "Agreement"). The Agreement provided for the acquisition and completion of the Project by the Board and the issuance by the Board of its Series A Pollution Control Revenue Bonds ("Original Bonds") and Series B Pollution Control Revenue Bonds ("First Additional Bonds") in the aggregate amount of $26 million. The proceeds of the sale of the Original Bonds and the first Additional Bonds were deposited by the Board with a trustee ("Trustee") under an indenture dated as of June 1, 1975 and a supplement thereto dated September 1, 1982 between the Board and the Trustee ("Trust Indenture") pursuant to which the Original Bonds and the First Additional Bonds were issued and secured.

SEGCO states that because of current market conditions and prevailing interest rate levels, it can realize interest cost savings through a refunding of the outstanding Original Bonds and/or First Additional Bonds. Therefore, SEGCO states it plans to request that the Board issue up to an aggregate of $24.5 million of its Pollution Control Revenue Refunding Bonds ("Additional Bonds") in one or more series from time-to-time through December 31, 1995 in order to redeem the outstanding Original Bonds and/or First Additional Bonds. SEGCO states that if the proceeds of the Additional Bonds are insufficient for this purpose, it will provide the remainder with its own funds.

Upon issuance of any Additional Bonds, SEGCO's obligations under the Additional Agreements to make purchase price payments will be changed to require additional payments sufficient (together with other money held by the Trustees under the Trust Indenture for that purpose) to pay the principal of, premium (if any), and interest on the Additional Bonds as they become due and payable. The Board and the Trustee will enter into one or more supplements ("Supplemental Indenture") to the Trust Indenture or, in the alternative, a new Indenture ("Additional Indenture") providing for each series of the Additional Bonds. It is proposed that each series of the Additional Bonds will mature from one to thirty years from the first day of the month in which they are initially issued and may be entitled to the benefit of a mandatory redemption sinking fund. The Supplemental Indenture or the Additional Indenture may give the holders of the related Additional Bonds the right, during such time, if any, as such Additional Bonds bear interest at a fluctuating rate, to require SEGCO to purchase such Additional Bonds from time-to-time, and arrangements may be made for the remarketing of any such Additional Bonds through a remarketing agent. SEGCO also may be required to purchase the Additional Bonds, or the Additional Bonds may be subject to mandatory redemption, at any time if the interest thereon is determined to be subject to federal income tax. The interest rate to be borne by any series of Additional Bonds will be fixed by the Board and will be either a fixed rate, which may be convertible to a rate which will fluctuate in accordance with a specified prime or base rate or rates or be determined through auction or remarketing procedures, or a fluctuating rate, which may be convertible to a fixed rate. SEGCO states that the annual interest rates on obligations, the interest on which is tax exempt, recently have been and can be expected at the time of issue of any series of Additional Bonds to be approximately one to three percentage points lower than the rates on obligations of like tenor and comparable quality, interest on which is fully subject to federal income tax.

Alabama proposes to guarantee SEGCO's payment obligations under each Additional Agreement. The guaranty will be assigned by the Board to the Trustee.

Georgia proposes to agree by letter ("Letter") to reimburse Alabama pro rata (based on Georgia's ownership of outstanding equity securities of SEGCO as of the date payment is due) for payments made by Alabama under the guaranty. The Letter will provide that the commitment of Georgia thereunder will terminate at any time Georgia ceases to own an interest in SEGCO.

SEGCO also proposes to secure its obligations under any Additional Agreements by causing an irrevocable letter of credit ("Letter of Credit") of a bank ("Bank") to be delivered to the Trustee. The Letter of Credit would be an irrevocable obligation of the Bank to pay to the Trustee, upon request, up to an amount necessary in order to pay the principal of and premium (if any) and certain accrued interest on the related Additional Bonds when due. Pursuant to a separate agreement with the Bank, SEGCO would agree to pay to the Bank on demand all amounts that are drawn under the Letter of Credit, as well as certain fees and expenses. Alternatively, SEGCO proposes to obtain an insurance policy ("Insurance Policy") from an insurance company guaranteeing the payment when due of the principal of and interest on such Additional Bonds. Such insurance policy would extend for the term of the Additional Bonds and would be non-cancellable by the insurance company for any reason. SEGCO requests an exception from the competitive bidding requirements of Rule 50 pursuant to subsection 50(a)(5) thereunder so that it may negotiate with the Bank for the Letter of Credit and with an insurance company for the Insurance Policy. It may do so.

For the Commission, by the Division of Investment Management, pursuant to delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90-29951 Filed 12-21-90; 8:45 am]

BILLING CODE 8010-01-M

[Investment Company Act Release No. 17904, International Series Release No. 209; 812-7518]

ASA Limited; Application for an Order under the Investment Company Act of 1940

December 17, 1990.

AGENCY: Securities and Exchange Commission ("SEC").

ACTION: Notice of application for an order amending prior orders under section 7(d) of the Investment Company Act of 1940 (the "Act").

APPLICANT: ASA Limited.

RELEVANT ACT SECTION: Section 7(d).

SUMMARY OF APPLICATATION: Applicant is a foreign issuer that registered as an investment company pursuant to an order under section 7(d) of the Act. The relief granted in the existing order, as amended, was conditioned on the requirement that no amendment would be made to applicant's charter, by-laws, or custodian agreements absent an order of the SEC. Applicant now seeks an amended order permitting it to amend its charter and by-laws, along with its custodian and subcustodian agreements, where appropriate, to allow for: (a) An increase from $75,000 to $200,000 in the amount of cash applicant can hold outside of the custody of a United States custodian to cover administrative expenses; (b) the ability to invest up to 5% of its assets in interest-bearing bank accounts with "eligible foreign custodians" or "overseas branches of qualified United States banks," as those terms are defined in rule 17f–5 under the Act; and (c) certain changes in the composition and operation of applicant's board of directors.

FILING DATE: The application was filed on May 14, 1990 and amended on July 3, 1990, August 2, 1990, and September 26, 1990. Applicant has agreed to make certain amendments to the application during the notice period, the substance of which are reflected in this notice.

HEARING OR NOTIFICATION OF HEARING: An order granting the application will be issued unless the SEC orders a hearing. Interested persons may request a hearing by writing to the SEC's Secretary and serving applicant with a copy of the request, personally or by mail. Hearing requests should be received by the SEC by 5:30 p.m. on January 14, 1991 and should be accompanied by proof of service on applicant, in the form of an affidavit or, for lawyers, a certificate of service. Hearing requests should state the nature of the writer's interest, the reason for the request, and the issues contested. Persons may request notification of a hearing by writing to the SEC's Secretary.

ADDRESSES: Secretary, SEC, 450 Fifth Street, NW., Washington, DC 20549. Applicant, 54 Marshall Street, Johannesburg, South Africa, with a copy to Whitney D. Pidot, Esq., Shearman & Sterling, 599 Lexington Avenue, New York, NY 10022.

FOR FURTHER INFORMATION CONTACT: Nicholas D. Thomas, Staff Attorney, at (202) 504–2263, or Jeremy N. Rubenstein, Branch Chief, at (202) 272–3023 (Division of Investment Management, Office of Investment Company Regulation).

SUPPLEMENTARY INFORMATION: The following is a summary of the application. The complete application may be obtained for a fee at the SEC's Public Reference Branch.

Applicant's Representations

1. Applicant is a South African company and a closed-end management investment company registered under the Act. Applicant's shares are traded on the New York Stock Exchange.

2. On August 13, 1958, pursuant to section 7(d) of the Act, the SEC entered an order permitting applicant to register as an investment company under section 8 of the Act. Investment Company Act Release Nos. 2739 (July 3, 1958) (notice) and 2756 (Aug. 13, 1958) (order). Applicant was formed as a vehicle for investing primarily in the equities of South African companies engaged in gold mining and related activities. The 1958 order was issued subject to conditions modeled after the provisions of rule 7d–1 under the Act, which sets forth the conditions that should be included in applications by Canadian investment companies seeking to register under the 1940 Act. One such condition was that applicant could not alter its charter, bylaws, or custodian agreement without SEC approval.

3. By the terms of the 1958 order, applicant was required to keep all of its assets, except for $75,000 to cover administrative expenses, in the custody of a United States custodian. The $75,000 was kept in a non-interest-bearing checking account with a South African bank.

4. In 1985, the SEC issued an order amending the 1958 order. The 1985 order permitted applicant, among other things, to expand its investment policy to permit investments of up to 3% of its assets in short-term rand-denominated investments issued or guaranteed by the Republic of South Africa. The 1985 order also allowed applicant to place those investments in the custody of an eligible foreign custodian or an overseas branch of a qualified United States bank located in the Republic of South Africa. Investment Company Act Release Nos. 14826 (Dec. 4, 1985) (notice) and 14878 (Dec. 31, 1985) (order).

5. In addition to the investments already permitted under the 1985 order, applicant seeks authority to invest up to 5% of its assets in rand-denominated interest bearing accounts with eligible foreign custodians or overseas branches of qualified United States banks located in the Republic of South Africa. To support its request, applicant states that its inability to hold a larger portion of its assets in rand-denominated investments has occasionally prevented applicant from liquidating large securities positions to respond to prevailing market conditions. Applicant states that it would consider such liquidations if it had more flexibility in determining how best to invest the proceeds of such liquidation.[1]

6. Applicant proposes to increase from $75,000 to $200,000 the amount of cash that it is permitted to maintain in an account with an eligible foreign custodian or an overseas branch of a qualified United States bank located in the Republic of South Africa for the purpose of meeting its administrative expenses. Applicant states that the $75,000 figure was sent in 1958 and that due to the higher cost of doing business and the fact that its assets have increased from $28,000,000 to $672,000,000, $75,000 is no longer sufficient to meet its day to day cash requirements.

7. With respect to the cash that applicant could maintain in the Republic of South Africa to meet administrative expenses and the additional 5% of its assets that applicant could invest in interest bearing accounts, applicant will comply with the provisions of Rule 17f–5 as if it were a registered management investment company organized or incorporated in the United States.

8. Applicant requests permission to allow its board of directors to fix the number of directors that comprise the board at no fewer than five and no more than fifteen, and allow the board of directors to fill any positions that are created thereby until the new board member or members can be approved by the shareholders at the next annual meeting. Applicant states that it has often missed the opportunity to have a well-qualified person join its board of directors because that person was not available during the time applicant was preparing its notice of an annual shareholder meeting. Applicant will continue to comply with section 16(a) of the Act, which permits the board of directors of a registered investment company to fill any vacancy on the board only if, immediately thereafter, at least two-thirds of the directors are persons who were elected by the shareholders.

9. Applicant further requests permission to reduce from 60% to a simple majority the number of United States resident citizens that are required to sit on the board at any given time. Applicant states that it has become

[1] By letter dated December 14, 1990, counsel for applicant stated that "[s]uch proposed deposits with such banks will not constitute loans or other extensions of credit to prohibited borrowers under Section 305 of the Comprehensive Anti-Aparheid Act of 1986 or the regulations promulgated thereunder."

increasingly difficult to maintain the balance of United States to non-United States directors and that requiring that a majority of the directors be United States citizens and residents still exceeds the requirements of rule 7d–1, which mandates that a majority of the directors be citizens of the United States, and that a majority of such citizens also be residents of the United States. Applicant also maintains that the other safeguards of rule 7d–1, which were imposed in the 1958 order, including requirements that directors consent to United States jurisdiction and appoint a United States agent for the purpose of receiving service of process, provide sufficient assurance that the Act will be legally and practically enforceable against applicant and its directors.

10. Finally, applicant seeks permisison to amend its charter and by-laws, along with its custodian and subcustodian agreements, where appropriate, to carry out the above described modifications.

For the Commission, by the Division of Investment Management, under delegated authority.

Margaret H. McFarland,

Deputy Secretary.

[FR Doc. 90–29954 Filed 12–21–90; 8:45 am]

BILLING CODE 8010–01–M

SMALL BUSINESS ADMINISTRATION

Reporting and Recordkeeping Requirements Under OMB Review

AGENCY: Notice of reporting requirements submitted for review.

SUMMARY: Under the provisions of the Paperwork Reduction Act (44 U.S.C. chapter 35), agencies are required to submit proposed reporting and recordkeeping requirements to OMB for review and approval, and to publish a notice in the Federal Register notifying the public that the agency has made such a submission.

DATES: Comments should be submitted on or before January 23, 1991. If you intend to comment but cannot prepare comments promptly, please advise the OMB Reviewer and the Agency Clearance Office before the deadline.

COPIES: Request for clearance (S.F. 83) supporting statement, and other documents submitted to OMB for review may be obtained from the Agency Clearance Officer. Submit comments to the Agency Clearance Officer and the OMB Reviewer.

FOR FURTHER INFORMATION CONTACT:

Agency Clearance Officer: William Cline, Small Business Administration 1441 L Street, NW., room 200 Washington, DC 20416, telephone: (202) 653–8538

OMB Reviewer: Gary Waxman, Office of Information and Regulatory Affairs, Office of Management and Budget New Exectutive Office Building, Washington, DC 20503

Title: Evaluation of 7(a) Guaranteed Loan Program

Form No.: SBA Form 1778

Frequency: one-time survey

Description of Respondents: Small Business recipients and eligible non-recipients of an SBA 7(a) guaranteed loan.

Annual Responses: 2,000

Annual Burden: 2,900

William Cline,

Chief, Administrative Information Branch.

[FR Doc. 90–30063 Filed 12–21–90; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2471]

Indiana (With Contiguous Counties in Illinois); Declaration of Disaster Loan Area

As a result of the President's major disaster declaration on December 6, 1990, I find that Lake County in the State of Indiana constitutes a disaster area as a result of damages caused by severe storms and flooding beginning on November 27, 1990. Applications for loans for physical damage may be filed until the close of business on February 6, 1991, and for loans for economic injury until the close of business on September 6, 1991, at the address listed below: Disaster Area 2 Office, Small Business Administration, 120 Ralph McGill Blvd., 14th Fl., Atlanta, Georgia 30308.

or other locally announced locations. In addition, applications for economic injury loans from small businesses located in the contiguous counties of Jasper, Newton, and Porter in the State of Indiana and Cook, Kankakee, and Will Counties in the State of Illinois may be filed until the specified date at the above location.

The interest rates are:

	Percent
For physical damage:	
Homeowners with credit available elsewhere	8.000
Homeowners without credit available elsewhere	4.000
Businesses with credit available elsewhere	8.000
Businesses and non-profit organizations without credit available elsewhere	4.000
Others (including non-profit organizations) with credit available elsewhere	9.125
For economic injury:	
Businesses and small agricultural cooperative without credit available elsewhere	4.000

The number assigned to this disaster for physical damage is 247106 and for economic injury the numbers are 719600 for the State of Indiana and 719700 for the State of Illinois.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 11, 1990.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 90–30064 Filed 12–21–90; 8:45 am]

BILLING CODE 8025–01–M

[Declaration of Disaster Loan Area #2469; Amendment #1]

Washington; Declaration of Disaster Loan Area

The above-numbered Declaration is hereby amended in accordance with amendments dated November 28 and December 1, 1990 to the President's major disaster declaration of November 26 to include the counties of Grays Harbor, King, Lewis, Mason, Pacific, Pierce, Thurston, and Wahkiakum in the State of Washington as a disaster area as a result of damages caused by severe storms and flooding beginning on November 9, 1990.

In addition, applications for economic injury loans from small businesses located in the contiguous counties of Cowlitz, Jefferson, Kittitas, Skamania, and Yakima in the State of Washington and Clatsop and Columbia in the State of Oregon may be filed until the specified date at the previously designated location.

All other information remains the same, i.e., the termination date for filing applications for physical damage is January 25, 1991, and for economic injury until the close of business on August 26, 1991.

(Catalog of Federal Domestic Assistance Program Nos. 59002 and 59008)

Dated: December 11, 1990.

Alfred E. Judd,

Acting Assistant Administrator for Disaster Assistance.

[FR Doc. 90–30065 Filed 12–21–90; 8:45 am]

BILLING CODE 8025–01–M

DEPARTMENT OF STATE

[Public Notice 1308]

Public Information Collection Requirement Submitted to OMB for Review

AGENCY: Department of State.

ACTION: The Department of State has submitted the following public information collection requirement to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96–511.

SUMMARY: Section 599C of Public Law 101–513 (FY 1991 Foreign Operations Export Financing, and Related Programs Appropriations Act, enacted November 5, 1990, provides limited monetary payments and federal life and health insurance benefits as a humanitarian gester to certain United States nationals held hostage in Kuwait, Iraq, or Labanon, and to the family members thereof, subject to specified funding and other limitations. The Bureau of Consular Affairs, Department of State is proposing an Application for Benefits to be used by individuals who claim any eligibility under section 599C of the Act. The following summarizes the information collection proposal submitted to OMB:

Type of request—New
Originating office—The Bureau of Consular Affairs
Title of information collection—Application for Benefits for U.S. Hostages
Frequency—On occasion
Respondents—Individuals who claim any eligibility under section 599C of the Act
Estimated number of respondents—2,000
Average hours per response—1 hour
Total estimated burden hours—2,000

An interim Final Rule (22 CFR part 193, Benefits for Hostages in Iraq, Kuwait, and Lebanon) is pending in the Office of Management and Budget.

ADDITIONAL INFORMATION OR COMMENTS: Copies of the proposed forms and supporting documents may be obtained from Gail J. Cook (202) 647–3538. Comments and questions should be directed to (OMB) Marshall Mills (202) 395–7340.

Dated: December 12, 1990.

Sheldon J. Krys,

Assistant Secretary for Diplomatic Security.

[FR Doc. 90–30006 Filed 12–21–90; 8:45 am]

BILLING CODE 4710–22–M

DEPARTMENT OF TRANSPORTATION

Office of the Secretary

Secretarial Approval; Maritime Insurance Coverage

December 19, 1990.

SUBJECT: Provision of Maritime Insurance Coverage for Commercial Service.

By virtue of the authority delegated to me by Presidential Memorandum of August 29, 1990, and by virtue of the authority set forth in section 1202 of the Merchant Marine Act, 1936, as amended (Act), 46 U.S.C. App. 1282, I hereby:

Approve, on behalf of the President, the Department of Transportation's provision of insurance or reinsurance of vessels (including cargoes and crew) entering the Middle East region against loss or damage by war risks in the manner and to the extent provided in title XII of the Act, 46 U.S.C. app. 1281, *et seq.*, for purposes of responding to the current crisis in the Middle East, whenever, after consultation with the Department of State, I determine that such insurance adequate for the needs of the waterborne commerce of the United States cannot be obtained on reasonable terms and conditions from companies authorized to do an insurance business in a State of the United States.

This action is taken in consultation with the Secretary of State and the Director of the Office of Management and Budget.

This approval is effective for sixty days. It shall be brought to the attention of all operators and published in the **Federal Register.**

Secretary of Transportation,

Department of Transportation.

[FR Doc. 90–30069 Filed 12–21–90; 8:45 am]

BILLING CODE 4910–62–M

[Docket No. 47318]

Joint Application of Continental Airlines, Inc., and American Airlines, Inc. for Approval of a Transfer of Certificate Authority, (Seattle/Portland-Tokyo/Osaka); Notice Establishing Procedural Dates

On December 14, 1990, Continental Airlines and American Airlines jointly filed a motion requesting the establishment of expedited procedural dates under Subpart Q of the Department's Rules of Practice for the processing of their application for approval of the transfer to American of Continental's Seattle/Portland-Japan route authority. In support of the motion, the carriers emphasize that early approval is highly important to Continental in view of its recent filing under chapter 11 of the Bankruptcy Code.

After a preliminary review of the information supplied by the carriers in connection with the application and in response to the Department's letter request dated December 5, 1990, we conclude that the application is substantially complete and that a highly expedited procedural schedule under subpart Q is warranted without waiting for answers to the motion. We therefore establish the following deadlines for answers and replies:

Answers to the application: December 28, 1990.

Replies: January 2, 1991.

We will serve copies of this notice on all parties in Docket 47318 and will publish it in the **Federal Register.**

Dated at Washington, DC: December 19, 1990.

Patrick V. Murphy,

Deputy Assistant Secretary for Policy and International Affairs.

[FR Doc. 90–30068 Filed 12–19–90; 12:59 pm]

BILLING CODE 4910–62–M

Federal Aviation Administration

Proposed Advisory Circular—Composite Propeller Blade Fatigue Substantiation

AGENCY: Federal Aviation Administration (FAA), DOT.

ACTION: Notice of proposed advisory circular (AC) and request for comments.

SUMMARY: This notice announces the availability of and requests comments on a proposed advisory circular (AC No. 35.37). The AC provides guidance and an acceptable method, but not the only method, by which composite propeller blades can be fatigue evaluated for determination of safe vibratory loadings as required by Federal Aviation Regulation (FAR) 35.37.

DATES: Comments must be received on or before February 22, 1991.

ADDRESSES: Send all comments on the proposed AC to the Federal Aviation Administration, Attention: Engine & Propeller Standards Staff, ANE–110, Engine & Propeller Directorate, Aircraft Certification Service, 12 New England Executive Park, Burlington, Massachusetts 01803.

FOR FURTHER INFORMATION CONTACT: Martin Buckman, Engine & Propeller Standards Staff, ANE–110, at the above address, telephone (617) 273–7079.

SUPPLEMENTARY INFORMATION:

Comments Invited

A copy of the subject AC may be obtained by contacting the person named above under "**FOR FURTHER INFORMATION CONTACT.**" Interested persons are invited to comment on the proposed AC, and to submit such written data, views, or arguments as they may desire. Commenters must identify the subject of the AC and submit comments in duplicate to the address specified above. All communications received on or before the closing date for comments will be considered by the Engine & Propeller Directorate, Aircraft Certification Service, before issuing the final AC.

Background

In recent years, propellers with composite blades, introduced by several domestic and foreign manufacturers, have been type certificated. These blades have different design features compared to blades manufactured of metal or wood. Composite blades have fibers that can be woven or aligned in specified directions to give directional properties. The properties also depend on the type of fiber, their concentration and matrix material. The structure can exhibit multiple modes of failure. Allowable design stress limits must consider degrading effects of environmental exposure expected in service, such as temperature, moisture, erosion, nicks and chemical attack. Additionally, there are new and different design considerations for the retention of blades in the hub.

This advisory circular provides guidance by which composite propeller blades can be fatigue evaluated in order to determine safe vibratory loadings.

Issued in Burlington, Massachusetts on December 12, 1990.

Jack A. Sain,

Manager, Engine & Propeller Directorate, Aircraft Certification Service.

[FR Doc. 90-30009 Filed 12-21-90; 8:45 am]

BILLING CODE 4910-13-M

DEPARTMENT OF THE TREASURY

Public Information Collection Requirements Submitted to OMB for Review

December 18, 1990.

The Department of Treasury has submitted the following public information collection requirement(s) to OMB for review and clearance under the Paperwork Reduction Act of 1980, Public Law 96-511. Copies of the submission(s) may be obtained by calling the Treasury Bureau Clearance Officer listed. Comments regarding this information collection should be addresed to the OMB reviewer listed and to the Treasury Department Clearance Officer. Department of the Treasury, room 3171 Treasury Annex, 1500 Pennsylvania Avenue, NW., Washington, DC 20220.

U.S. Customs Service

OMB Number: 1515-0154.
Form Number: CF 339.
Type of Review: Extension.
Title: User Fees.
Description: The collection of informatioan is necessary for Customs to effectively collect fees from private and commercial vessels, private aircraft, operators of commercial trucks, and passenger and freight railroad cars entering the United States and recipients of certain dutiable mail entries for certain official services.
Estimated Number of Respondents: 190,800.
Estimated Burden Hours Per Response/Recordkeeping: 16 minutes.
Frequency of Response: On occasion.
Estimated Total Recordkeeping/ Reporting Burden: 50,887 hours.
Clearance Officer: Kathryn Kornos, (202) 566-4019, U.S. Customs Service, Paperwork Management Branch, room 6316, 1301 Constitution Avenue, NW., Washington, DC 20229.
OMB Reviewer: Milo Sunderhauf, (202) 395-6880, Office of Management and Budget, room 3001, New Executive Office Building, Washington, DC 20503.

Lois K. Holland,

Department Reports, Management Office.

[FR Doc. 90-29950 Filed 12-21-90; 8:45 am]

BILLING CODE 4820-02-M

Departmental Offices, Debt Management Advisory Committee; Meeting

Notice is hereby given, pursuant to section 10 of Public Law 92-463, that a meeting will be held at the U.S. Treasury Department in Washington, DC on January 29 and January 30, 1991, of the following debt management advisory committee:

Public Securities Association
Treasury Borrowing Advisory Committee

The agenda for the Public Securities Association Treasury Borrowing Advisory Committee meeting provides for a working session on January 29 and the preparation of a written report to the Secretary of the Treasury on January 30, 1991.

Pursuant to the authority placed in Heads of Departments by section 10(d) of Public Law 92-463, and vested in me by Treasury Department Order 101-05, I hereby determine that this meeting is concerned with information exempt from disclosure under section 552b(c)(4) and (9)(A) of title 5 of the United States Code, and that the public interest requires that such meetings be closed to the public.

My reasons for this determination are as follows. The Treasury Department requires frank and full advice from representatives of the financial community prior to making its final decision on major financing operations. Historically, this advice has been offered by debt management advisory committees established by the several major segments of the financial community, which committees have been utilized by the Department at meetings called by representatives of the Secretary. When so utilized, such a committee is recognized to be an advisory committee under Public Law 92-463. The advice provided consists of commercial and financial information given and received in confidence. As such debt management advisory committee activities concern matters which fall within the exemption covered by section 552b(c)(4) of title 5 of the United States Code for matters which are "trade secrets and commercial or financial information obtained from a person and privileged or confidential."

Although the Treasury's final announcement of financing plans may not reflect the recommendations provided in reports of an advisory committee, premature disclosure of these reports would lead to significant financial speculation in the securities market. Thus, these meetings also fall within the exemption covered by section 552b(c)(9)(A) of title 5 of the United States Code.

The Assistant Secretary (Domestic Finance) shall be responsible for maintaining records of debt management advisory committee meetings and for providing annual reports setting forth a summary of committee activities and such other matters as may be informative to the public consistent with the policy of section 552b of title 5 of the United States Code.

Dated: December 18, 1990.

Jerome H. Powell,

Assistant Secretary (Domestic Finance).

[FR Doc. 90-30093 Filed 12-21-90; 8:45 am]

BILLING CODE 4810-25-M

Office of Thrift Supervision

Appointment of Conservator; BancPlus Federal Savings Association

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for BancPlus Federal Savings Association, Pasadena, Texas on December 13, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30021 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Conservator; Bayshore Federal Savings Association

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Bayshore Federal Savings Association, La Porte, Texas on December 13, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30022 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

Appointment of Conservator; Civic Federal Savings Bank, Portsmouth, OH

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Civic Federal Savings Bank, Portsmouth, Ohio on December 13, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30023 filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

Comfed Savings Bank; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in sections 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision had duly appointed the Resolution Trust Corporation as sole Conservator for Comfed Savings Bank, Lowell, Massachusetts (Docket No. 3483), on December 13, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30024 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

Commerce Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Commerce Federal Savings Association, San Antonio, Texas ("Association"), on December 13, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30025 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

Empire Savings Bank, FSB; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Empire Savings Bank, FSB, Hammonton, New Jersey, on December 13, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30026 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

First South Federal Savings Association, Port Neches, TX; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for First South Federal Savings Association, Port Neches, Texas ("Association") on December 13, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30027 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

Home Federal Savings Bank, F.A.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Home Federal Savings Bank, F.A., Waukegan, Illinois, on December 13, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30028 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

Old Borough Federal Savings and Loan Association Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Old Borough Federal Savings and Loan Association on December 13, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
[FR Doc. 90–30029 Filed 12–21–90; 8:45 am]
BILLING CODE 6720–01–M

Olympic Federal Savings Association; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Olympic Federal Savings Association, on December 13, 1990.

Dated: December 18, 1990.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
[FR Doc. 90–30030 Filed 12–21–90; 8:45 am]
BILLING CODE 6720–01–M

Appointment of Conservator; Sabine Valley Federal Savings Association

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Sabine Valley Federal Savings Association, Center, Texas on December 13, 1990.

Dated: December 18, 1990.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
[FR Doc. 90–30031 Filed 12–21–90; 8:45 am]
BILLING CODE 6720–01–M

San Jacinto Savings Association, F.A.; Appointment of Conservator

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for San Jacinto Savings Association, F.A., Bellaire, Texas, on December 13, 1990.

Dated: December 18, 1990.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
[FR Doc. 90–30002 Filed 12–21–90; 8:45 am]
BILLING CODE 6720–01–M

Appointment of Conservator; Southeast Texas Federal Savings Association

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (B) and (H) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Southeast Texas Federal Savings Association, Woodville, Texas on December 13, 1990.

Dated: December 18, 1990.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
[FR Doc. 90–30033 Filed 12–21–90; 8:45 am]
BILLING CODE 6720–01–M

Appointment of Conservator; Timberland Federal Savings Association

Notice is hereby given that, pursuant to the authority contained in section 5 (d)(2) (B) and (H) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Conservator for Timberland Federal Savings Association, Nacogdoches, Texas, on December 13, 1990.

Dated: December 18, 1990.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
[FR Doc. 90–30034 Filed 12–21–90; 8:45 am]
BILLING CODE 6720–01–M

BancPlus Savings Association; Replacement of Conservator With Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for BancPlus Savings Association, Pasadena, Texas, with the Resolution Trust Corporation as sole Receiver for the Association on December 13, 1990.

Dated: December 18, 1990.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
[FR Doc. 90–30035 Filed 12–21–90; 8:45 am]
BILLING CODE 6720–01–M

Bayshore Savings Association; Replacement of Conservator With Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Bayshore Savings Association, La Porte, Texas, with the Resolution Trust Corporation as sole Receiver for the Association on December 13, 1990.

Dated: December 18, 1990.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
[FR Doc. 90–30036 Filed 12–21–90; 8:45 am]
BILLING CODE 6720–01–M

Civic Savings Bank; Replacement of Conservator With Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5 (d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for Civic Savings Bank, Portsmouth, Ohio, with the Resolution Trust Corporation as sole Receiver for the Association on December 13, 1990.

Dated: December 18, 1990.
By the Office of Thrift Supervision.
Nadine Y. Washington,
Executive Secretary.
[FR Doc. 90–30037 Filed 12–21–90; 8:45 am]
BILLING CODE 6720–01–M

Commerce Savings Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Commerce Savings Association, San Antonio, Texas ("Association"), on December 13, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30038 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

Empire Savings Bank, S.L.A.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Empire Savings Bank, S.L.A., Hammonton, New Jersey, Docket No. 01659, on December 13, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30039 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

First Federal Savings Bank of Kansas; Replacement of Conservator With Receiver

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator for First Federal Savings Bank of Kansas, Wellington, Kansas, with the Resolution Trust Corporation as sole Receiver for the Association on December 13, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30040 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

First South Federal Savings Association, Port Neches, TX; Appointment of Receiverse

Notice is hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for First South Federal Savings Association, Port Neches, Texas, on December 13, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30041 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

Replacement of Conservator With Receiver; Great American S&L F.A. et al.

Notice of hereby given that, on December 13, 1990 pursuant to the authority contained in subdivision (F) of 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision duly replaced the Resolution Trust Corporation as Conservator with the Resolution Trust Corporation as sole Receiver for each of the following savings associations:

Name	Location	Docket No.
1. Great American S&LA, F.A.	Corinth, MS	8792
2. Mississippi Savings Bank, F.S.B.	Batesville, MS	8841
3. Peoples Federal Savings Bank.	Bartlesville, OK.	8753
4. Excel Banc Savings Association.	Laredo, TX	6222

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30042 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

Home Federal Bank for Savings; Appointment of Receiver

Notice of hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Home Federal Bank for Savings, Waukegan, Illinois, Docket No. 6442, on December 13, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30043 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

Hometown Savings Bank, F.S.B., Delphi, IN; Replacement of Conservator With Receiver

Notice of hereby given that, pursuant to the authority contained in subdivision (F) of section 5(d)(2) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly replaced the Resolution Trust Corporation as Conservator for Hometown Savings Bank, FSB, Delphi, Indiana, with the Resolution Trust Corporation as sole Receiver for the Association on December 13, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30044 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

Mid-America Federal Savings and Loan Association, Columbus, OH; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust

Corporation as sole Receiver for Mid-America Federal Savings and Loan Association, Columbus, Ohio, OTS. No. 2359, on December 13, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30045 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

Old Borough Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Old Borough Savings and Loan Association, Trenton, New Jersey, OTS No. 5679, on December 13, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30046 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

Olympic Federal Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owner's Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Olympic Federal Savings and Loan Association, Berwyn, Illinois, Docket No. 0982, on December 13, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30047 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

Sabine Valley Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Sabine Valley Savings and Loan Association, Center, Texas, Docket No. 6371, on December 13, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30048 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

San Jacinto Savings Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(A) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for San Jacinto Savings Association, Bellaire, Texas, Docket No. 6321, on December 13, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30049 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

Southeast Texas Savings and Loan Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Southeast Texas Savings and Loan Association, Woodville, Texas, Docket No. 6632, on December 13, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30050 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

Southern Savings Bank, S.S.B.; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(c) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Southern Savings Bank, S.S.B., New Orleans, Louisiana, docket No. 1302, on December 14, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30051 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

Timberland Savings Association; Appointment of Receiver

Notice is hereby given that, pursuant to the authority contained in section 5(d)(2)(F) of the Home Owners' Loan Act of 1933, as amended by section 301 of the Financial Institutions Reform, Recovery, and Enforcement Act of 1989, the Office of Thrift Supervision has duly appointed the Resolution Trust Corporation as sole Receiver for Timberland Savings Association, Nacogdoches, Texas, Docket No. 7591, on December 13, 1990.

Dated: December 18, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary

[FR Doc. 90-30052 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

[AC-67]

Fairview Federal Savings and Loan Association, Ellicott City, MD; Final Action; Approval of Conversion Application

Notice is hereby given that on 12/10, 1990, the Director of the Office of Thrift Supervision, or his designee acting pursuant to delegated authority, approved the application of Fairview Federal Savings and Loan Association, Ellicott City, Maryland, for permission to convert to the stock form of organization pursuant to a supervisory conversion. Copies of the approval are available for inspection at the Secretariat, Office of Thrift Supervision, 1700 G Street NW., Washington, DC 20552.

Dated: December 10, 1990.

By the Office of Thrift Supervision.

Nadine Y. Washington,

Executive Secretary.

[FR Doc. 90-30053 Filed 12-21-90; 8:45 am]

BILLING CODE 6720-01-M

DEPARTMENT OF VETERANS AFFAIRS

Advisory Commission on the Future Structure of Veterans Health Care; Meeting

The Department of Veterans Affairs gives notice under Public Law 92–463 that a meeting of the Commission on the Future Structure of Veterans Health Care will be held on January 16 and 17, 1991. The session will be held between 8 a.m. and 5 p.m. on January 16, and 8:30 a.m. and 1 p.m. on January 17, at the Los Angeles Airport Hilton, International room B, 5711 West Century Boulevard, Los Angeles, California. The Commission's purpose is to review the missions and programs of the VA's health care facilities to determine whether changes in services, programs, or missions at individual facilities are needed, with a focus on providing care to eligible veterans in 2010. The agenda for the meeting will include presentations to the Commission by various VA and non-VA officials as well as working sessions for the Commissioners to discuss, study, and analyze specific critical VA health care issues. The meeting will be open to the public up to the seating capacity of the room. Interested persons may file written statements with the Commission before or within 10 days after the close of the meeting for inclusion in the official hearing transcript.

Persons wanting to file written statements or wanting additional information regarding the meeting should contact Mr. Robert Moran, Commission on the Future Structure of Veterans Health Care, Techworld Plaza, 800 K Street, NW., P.O. Box 88, Washington, DC, 20001, telephone (202) 633–7079.

Dated: December 4, 1990.

By Direction of the Secretary.

Sylvia Chavez Long,

Committee Management Officer.

[FR Doc. 90–30004 Filed 12–21–90; 8:45 am]

BILLING CODE 8320–01–M

Privacy Act of 1974; Proposed Amendment of System Notice Additional Routine Use Statement

Notice is hereby given that the Department of Veterans Affairs (VA) is considering adding a new routine use statement to the system of records entitled, "Veteran, Patient, Employee, and Volunteer Research and Development Project Records—VA" (34VA11) which is set forth on pages 787 and 788 of the **Federal Register** publication, "Privacy Act Issuances, 1987 Compilation, Volume V" and amended at 55 FR 42534 on October 19, 1990.

VA funds research projects and programs that are performed at VA health care facilities by VA staff. Applications for the projects and programs are submitted to VA Central Office where centrally funded research is reviewed by staff and/or advisory committees and others who provide a fair and objective evaluation of the quality of investigator-initiated research programs. The research proposals are evaluated for scientific and technical merit, budgetary needs, and duration of funding.

The research proposals are reviewed for scientific and technical merit by VA and non-VA researchers. The proposed routine use is to provide for the disclosure of the investigator's research proposal and information about the investigator to permit a peer review by non-VA researchers.

Interested persons are invited to submit written comments, suggestions, or objections regarding the proposed routine use to the Secretary, Department of Veterans Affairs (271A), 810 Vermont Avenue, NW, Washington, DC 20420. All relevant material received before January 23, 1991, will be considered. All written comments received will be available for public inspection only in Room 132 of the above address only between the hours of 8:00 a.m. and 4:30 p.m. Monday through Friday (except holidays) until February 4, 1991.

If no public comment is received during the 30-day review period allowed for public comment or unless otherwise published in the **Federal Register** by VA, the routine use in the system is effective January 23, 1991.

Approved: December 14, 1990.

Edward J. Derwinski,

Secretary of Veterans Affairs.

Notice of System of Records

In the system identified as 34VA11, "Veteran, Patient, Employee, and Volunteer Research and Development Project Records—VA" appearing on pages 787 and 788 of the **Federal Register** publication, "Privacy Act Issuances, 1987 Compilation, Volume V," and amended at 55 FR 42534 on October 19, 1990, the following routine use is added:

34VA11

SYSTEM NAME:

Veteran, Patient, Employee, and Volunteer Research and Development Project Records—VA.

* * * * *

ROUTINE USES OF RECORDS MAINTAINED IN THE SYSTEM, INCLUDING CATEGORIES OF USERS AND PURPOSES OF SUCH USES:

* * * * *

12. Information concerning individuals who have submitted research program proposals for funding, including the investigator's name, social security number, research qualifications and the investigator's research proposal, may be disclosed to qualified reviewers for their opinion and evaluation of the applicants and their proposals as part of the application review process.

[FR Doc. 90–30003 Filed 12–21–90; 8:45 am]

BILLING CODE 8320–01–M

Sunshine Act Meetings

Federal Register
Vol. 55, No. 247
Monday, December 24, 1990

This section of the FEDERAL REGISTER contains notices of meetings published under the "Government in the Sunshine Act" (Pub. L. 94-409) 5 U.S.C. 552b(e)(3).

SECURITIES AND EXCHANGE COMMISSION

Agency Meetings

"FEDERAL REGISTER" CITATION OF PREVIOUS ANNOUNCEMENT: [55 FR 51527 December 14, 1990].

STATUS: Closed meeting.

PLACE: 450 Fifth Street, NW., Washington, DC.

DATE PREVIOUSLY ANNOUNCED: Tuesday, December 11, 1990.

CHANGE IN THE MEETING: Deletion:

The following items were not considered at a closed meeting on Tuesday, December 18, 1990, at 2:30 p.m.

Formal order of investigation.
Opinion.

Commissioner Lochner, as duty officer, determined that Commission business required the above change.

At times, changes in Commission priorities require alterations in the scheduling of meeting items. For further information and to ascertain what, if any, matters have been added, deleted or postponed, please contact: Paul Atkins at (202) 272–2000.

Dated: December 19, 1990.

Jonathan G. Katz,

Secretary.

[FR Doc. 90–30217 Filed 12–20–90; 4:02 pm]

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federal register

Monday
December 24, 1990

Part II

Department of Housing and Urban Development

Office of the Assistant Secretary for Community Planning and Development

24 CFR Part 570

Community Development Block Grants; State Program; Proposed rule

DEPARTMENT OF HOUSING AND URBAN DEVELOPMENT

Office of the Assistant Secretary for Community Planning and Development

24 CFR Parts 570

[Docket No. R-90-1482; FR-1877]

RIN 2506-AA84

Community Development Block Grants: State Program

AGENCY: Office of the Assistant Secretary for Community Planning and Development, HUD.

ACTION: Proposed rule.

SUMMARY: This proposed rule would revise HUD's regulations governing the State administration of Community Development Block Grant nonentitlement funds (24 CFR part 570, subpart I) to incorporate changes to the Housing and Community Development Act of 1974 made by the Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-181, approved November 30, 1983) and the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988). The rule would make additional changes designed to clarify and reorganize the subpart. The proposed rule also solicits comments on several regulatory alternatives.

DATES: Comments are due February 22, 1991.

ADDRESSES: Interested persons are invited to submit comments regarding this rule to the Office of the General Counsel, Rules Docket Clerk, room 10276, Department of Housing and Urban Development, 451 Seventh Street SW., Washington, DC 20410. Communications should refer to the above docket number and title. A copy of each communication submitted will be available for public inspection during regular business hours at the above address.

FOR FURTHER INFORMATION CONTACT: Richard Kennedy or Linda Thompson, State and Small Cities Division, Office of Community Planning and Development, Department of Housing and Urban Development, 451 Seventh Street, SW., Washington, DC 20410, telephone (202) 708-1322. (This is not a toll-free number.) The TDD number is 202-708-2565.

SUPPLEMENTARY INFORMATION:

Information Collection Requirements

The proposed rule, at § 570.491 (Recordkeeping requirements) and § 570.492 (Performance and evaluation reports), contains references to general recordkeeping and reporting requirements. The format and content of these requirements will be developed after consultation with national associations of state and local governments and would be based on joint agreement with states. In addition, these consultations will consider the need for these paperwork requirements. The Department developed model recordkeeping and performance and evaluation reporting in cooperation with eight national associations of state and local governments in 1984. These recordkeeping requirements have been followed by states since 1985.

The proposed rule also contains several references to state and local documentation requirements concerning such areas as eligible activities, national objectives, and citizen participation. Similar to the general recordkeeping and reporting requirements, these documentation requirements will be developed after consultation with the States and would be based on joint agreement with the States. The sections containing the documentation requirements are listed below.

570.483(a)(4)
570.483(d)(3)
570.483(e)
570.484(b)(1)(i)
570.485(b)
570.486(a)(1)(ii)(D)
570.486(a)(2)(iv)
570.486(c)
570.487(b)
570.487(e)(2)(v)

The information collection requirements developed as a result of the consultation with States will be submitted to the Office of Management and Budget (OMB) for review under the Paperwork Reduction Act of 1980. No person may be subjected to a penalty for failure to comply with these information collection requirements until they have been approved and assigned an OMB control number. The OMB control number, when assigned, will be announced by separate notice in the **Federal Register.**

Background

Title I of the Housing and Community Development Act of 1974 (the Act) governs HUD's Community Development Block Grant (CDBG) program. 24 CFR part 570 of HUD's regulations describes the policies and procedures applicable to the program. Subpart I of this part governs the State administration of Community Development Block Grant nonentitlement funds (State program).

The Housing and Urban-Rural Recovery Act of 1983 (Pub. L. 98-121, approved November 30, 1983) (1983 Amendments) and the Housing and Community Development Act of 1987 (Pub. L. 100-242, approved February 5, 1988) (1987 Amendments) made several significant revisions to the Act. HUD has published final rules (see 53 FR 34416, September 6, 1988) and proposed rules (see 55 FR 11556, March 28, 1990) implementing these statutory changes for CDBG programs, except the State program. This proposed rule would revise Subpart I to incorporate these statutory changes. The rule would make additional changes designed to clarify HUD's interpretation of the statute and reorganize subpart I.

In addition to incorporating specific statutory changes, HUD needs to revise the existing rule to address several issues that have arisen since the existing regulations were promulgated. First, numerous policy memoranda regarding specific issues in the State program have accumulated over the years, as HUD has responded to specific State questions and issued non-binding guidance. States have complained, and HUD agrees, that these memoranda and issuances, totaling to 309 today, are an inefficient and confusing means of providing non-binding guidance for this program. These memoranda should now be condensed and clarified, and a portion of them may be codified in this proposed rule.

The second issue involves the effectiveness of HUD oversight of this program. In 1988, the HUD Inspector General (IG) issued a report that identified specified projects that had fallen short of providing the benefits to low and moderate income persons that had been expected. The IG concluded that more regulation of this program was needed to provide effective oversight. Specifically, the IG recommended further regulation in the areas of program requirements, more timely use of funds, additional program monitoring and clarification of program income policy. Although HUD disagreed with some of the IG's conclusions, HUD subsequently classified the lack of regulation in this program as a "material weakness" that must be addressed. In this rulemaking, HUD intends to further examine the merits of the IG's recommendations and take suitable action in the final rule.

In summary, this rulemaking has three goals: updating the rules to incorporate specific statutory changes; clarifying, condensing, and codifying as needed HUD's numerous policy memoranda; and responding to the IG's concerns as discussed in the 1988 report. In developing a final rule, HUD intends

that the final rule provide maximum feasible deference to the States.

Several regulatory alternatives have been identified that may be effective in achieving these goals. The Department intends to adopt one or a mix of these alternatives at the final rule stage, after fully considering all of the evidence in the public record. The Department also intends to strike an appropriate balance between the need for Federal regulation to implement the CDBG States program, and the need for State discretion in implementing the program.

The Department invites comment on the relative costs, effects on State programs and State flexibility, and on the benefits of these alternatives (including directing resources to the most needy) on any specific problems that have been identified that may weigh for or against specific alternatives. In order for the Department to be most responsive in considering the comments on the alternatives, comments should be specific as to how suggested changes would be implemented in the regulations.

These regulatory alternatives are:

(A) Provide more regulations for the State program than in the text proposed for Option B. (Commenters should specify the areas of the rule that require additional regulation, the justification for regulatory action in this area, and the approach that HUD should adopt in developing these regulations.)

(B) The proposed text, which would regulate the areas already regulated in the CDBG Entitlement program (24 CFR part 570) and areas required by statute, is acceptable and should be implemented.

(C) HUD regulation is needed, but only in those areas where the record contains evidence of significant State mismanagement. This alternative would continue to provide flexibility to the States in those areas where the program has generally operated well, but would result in more stringent regulations where supported by evidence of problems.

(D) A flexible waiver provision needs to be substituted for the strict waiver provision in the proposed text. This change would be made to strike an appropriate regulatory balance which would allow a State to request a waiver of specific regulatory provisions which are not based on statute and to substitute its own State requirements. The final rule would allow HUD to waive a specific requirement not only in a case where application of the requirement would result in "undue hardship" and "adversely affect" the purposes of the Act but also under a less strict circumstance. Commenters should indicate which less strict circumstances for waivers might be appropriate.

(E) Instead of regulatory requirements, the final rule should permit State decisions on implementation, with prior HUD approval or prior HUD review and comment of the State approach. This alternative may not be appropriate for all parts of the rule or for certain types of expenditures or programs. Commenters that support this alternative should specify the areas that would be so covered.

(F) The proposed text is overly burdensome, and regulates in areas that exceed statutory requirements or legitimate policy concerns. (Commenters should identify the specific provisions of the rule that they believe exceed HUD's statutory authority or legitimate policy concerns, and describe their alternative approach to addressing these issues.)

The public should assess these alternatives with respect to the specific provisions proposed in this NPRM. (With respect to Option (A), the public may address what it perceives to be an omission in the proposed rule.) The proposed regulatory provisions are adapted from the regulations in place for the Entitlement program, or are intended to implement specific statutory requirements. In the final rule HUD may adopt these specific provisions as proposed, or, based on specific comments, may revise these provisions as necessary to implement the regulatory alternatives described above consistent with statutory requirements.

Decisions in the final rule as to how these six options will be applied will be based on differences between small cities and large Entitlement cities that justify different requirements; evidence of mismanagement by the States; the need for accountability; program benefits; and Federalism and other Administration priorities.

Legal Considerations Bearing on the Alternatives

Section 106(d)(6), added by the 1983 Amendments, provides:

> Any activities conducted with amounts received by a unit of general local government under this subsection shall be subject to the applicable provisions of this title and other Federal law in the same manner and to the same extent as activities conducted with amounts received by a unit of general local government under subsection (a).

A strict interpretation of this section would require HUD to subject the CDBG State-administered, HUD-Administered Small Cities, and HUD-Administered Entitlement programs to the same regulatory requirements concerning activities. Other, less strict interpretations of this section may be equally valid. Public comment is specifically requested on such interpretations.

In any event, HUD does not believe that HUD must have one regulation that applies to all three programs. HUD believes that separate regulations are needed for the State program that recognize the role and responsibilities of the State. In this connection, HUD believes that differences in the regulations could be justified on the basis of differences in the programs, i.e. differences between an entitlement program for large local governments and a nonentitlement program for small local governments.

Cranston-Gonzalez National Affordable Housing Act. Congress recently passed the Cranston-Gonzalez National Affordable Housing Act. Several sections of the Cranston-Gonzalez Act which affect the State CDBG program require little or no regulatory elaboration. Therefore, the proposed text reflects the following provisions of the Cranston-Gonzalez Act:

Sec. 902(a)—Overall benefit requirement changed from 60 percent to 70 percent (see proposed §§ 570.482 and 570.485).

Sec. 906—Protection of individuals engaging in nonviolent civil rights demonstrations (see proposed § 570.487).

Sec. 908.—15 percent Statewide cap on public services (see proposed § 570.483).

Sec. 912—Prohibition of discrimination on basis of religion (see proposed § 570.488).

Other sections of the Cranston-Gonzalez Act affecting the State CDBG program may require regulatory elaboration. HUD has chosen not to delay publication of this proposed rule in order to develop proposed regulations for those sections of the Cranston-Gonzalez Act, which include:

Sec. 907(a)—Assistance to for-profit entities for economic development projects.

Sec. 907(b)—New homeownership assistance eligible activity.

Sec. 922—Community development plans.

Sec. 955—Amendment to section 110 of the Act (Davis-Bacon Act requirements) to exempt volunteers.

Presentation of Alternative B

The text proposed for Alternative B is discussed below.

Section 570.480—General

This proposed section would provide that subpart I applies to the State CDBG program and that no other subparts of part 570 are applicable.

Section 570.481—Definitions

A new section containing definitions would be added to subpart I. Currently, definitions of terms related to the Entitlement program are defined in subpart A (see § 570.3). The definitions would require the State to define income. HUD requests comment on whether it should publish a definition for "income" at a later date.

Section 570.482—Primary and National Objective: State Responsibilities

The proposed rule at § 570.482 would generally reflect existing provisions of subpart I describing the primary objectives of the Act (the development of viable urban communities by providing decent housing and a suitable living environment, and expanding economic opportunities principally of persons of low and moderate income) and would continue to recognize that it is the responsibility of the State and local government participants, in accordance with the State's program design and procedures, to select the activities that best serve the objectives of the Act. The proposed rule provides that funded activities must address at least one of the national objectives described in the Act and implements requirements added by the 1983 and 1987 Amendment and the Cranston-Gonzalez National Affordable Housing Act which require, consistent with the primary objective of the Act, that not less than 70 percent of the total CDBG fund shall be used for activities that benefit persons of low and moderate income. The proposed rule provides that the total CDBG funds received by the State during a State-specified period of not more than three years must principally benefit persons of low and moderate income in a manner that ensures that not less than 70 percent of such funds are used for activities that benefit such persons. This overall benefit provision is also discussed at proposed § 570.485 which addresses the calculation of the 70 percent requirement.

Section 570.482(b) would reflect existing provisions governing the State's primary and direct responsibility for administering funds under the State program (see existing § 570.489(b)). The proposed rule would clarify that assistance must be made by the State in the form of grants to units of general local government. This paragraph describes the State's administrative responsibility to ensure that CDBG funds are provided and expended in accordance with the Act, subpart I, and other applicable laws. Finally, the proposed rule provides that HUD, in its review of the State's performance, will give maximum feasible deference to the State's choice of purposes, procedures and activities for fulfilling the objectives of the Act.

Section 570.483—Eligible Activities

General. The proposed rule at § 570.483 describes the only activities that are eligible for CDBG funding. The current regulation does not contain an eligibility section. Following is an explanation of certain activities that may require elaboration. Provisions not discussed are the same as the Entitlement program requirements at subpart C of part 570. The section also details activities that are ineligible, have limited eligibility, or are governed by statutes other than the Act (see § 570.483(a)).

Nonexclusion of eligible activities. Paragraph (a)(1) implements section 106(d)(2)(C)(iii) of the Act. The proposed rule provides that a State may not refuse to distribute CDBG funds for any eligible activity. This prohibition, however, does not limit a State's discretion in establishing criteria for selecting activities, and thus giving some activities priority above others.

Special assessments. Proposed § 570.483(a)(3) would implement 1983 Amendments governing special assessments. As revised, sections 104(b)(5) and 106(d)(5)(D) of the Act address the imposition of special assessments by States and units of general local government to recover capital costs of public improvements assisted in whole or in part with CDBG funds. As defined in the proposed rule (see § 570.481), special assessments are fees levied against property as a result of benefits derived from the installation of a public facility or improvement to recover capital costs. The term does not include taxes on property or the establishment of the value of property for the purpose of levying real estate, property or add valorem taxes. The definition also does not include user fees, or a financing system in which the cost of an improvement is repaid through charges based on usage. When CDBG funds are used to pay a portion of the cost of a public improvement, an assessment may be levied to recover the non-CDBG portion of the public improvement only when CDBG funds are used to pay the assessment levied against properties owned and occupied by low and moderate income persons. At the option of the State, however, if the unit of general local government certifies that it lacks sufficient funds to pay the assessment on behalf of moderate income persons and the State agrees, then the assessment levied upon properties owned and occupied by moderate income persons need not be paid with CDBG funds. However, when CDBG funds are used to pay a portion of public improvements, properties owned and occupied by low income persons may never be assessed to recover the non-CDBG portion unless the assessment is paid with CDBG funds.

This section would also permit the use of CDBG funds to pay the special assessment for public improvements not initially assisted with CDBG funds provided: (1) The installation of the public improvements was carried out in compliance with CDBG requirements; (2) the installation meets a national objective and (3) the requirements of § 570.483(a)(3)(i)(B) are met.

Assistance to primarily religious organizations. The Constitution prohibits the use of Federal funds for religious activities and the provision of assistance to primarily religious entities for either religious or secular activities. The Department recognizes the important role of religious organizations in the delivery of services and other assistance to lower income persons, and has made every attempt to explore mechanisms which facilitate that role within the principles of the Constitution. After a thorough examination of all the issues involved, including consultation with Department of Justice, the Department has determined that the use of CDBG funds to rehabilitate buildings owned by primarily religious organizations may be permissible, and permits CDBG funds to be used for the provision of otherwise eligible public services through a primarily religious organization under the circumstances described in proposed § 570.483(a)(6). A detailed discussion of constitutional limitations on CDBG funding was provided in the Community Development Block Grants Entitlement program regulation published September 6, 1988 (53 FR 34416, 34419–20).

Public services. The proposed rule would include a new limit on the amount of the grant to the State that may be used for public service activities in accordance with the Cranston-Gonzalez National Affordable Housing Act. Previously under section 105(a)(8) of the Act, no more than 15 percent of the amount of CDBG funds provided to a unit of general local government could be used for public service activities. Under the Cranston-Gonzalez

amendment to the Act, no more than 15 percent of the grant to the State (including program income) may be used for public service activities.

Substantial rehabilitation of housing. The 1987 Amendments added a new section 105(a)(19) to the Act which made the substantial reconstruction of housing owned and occupied by low and moderate income persons an eligible activity under limited circumstances. Under proposed § 570.483(d), CDBG funds may be used to assist in the substantial reconstruction of housing (i.e., rebuilding the housing on the same site) for residential structures that are owned and occupied by low or moderate income persons under two circumstances. Reconstruction would be permitted if:

—The need for the reconstruction was not determinable until after physical rehabilitation activities had commenced; or

—The unit of general local government is carrying out or proposing to carry out neighborhood housing rehabilitation, the housing that is to be reconstructed would otherwise be part of that neighborhood rehabilitation effort and the unit of general local government determines that: (1) The housing to be reconstructed is not suitable for rehabilitation, based on a definition of this term established by the unit of general local government; (2) the estimated cost of reconstruction is at least 20 percent less than the estimated cost of purchasing a comparable, newly constructed house (including land) located elsewhere in the neighborhood, and (3) the estimated cost of reconstruction is less than the fair market value of the reconstructed housing and land (based on an appraisal). The proposed rule clarifies some of these requirements and holds the States responsible for documenting and ensuring that units of general local government document, that all requirements under this section are met.

Economic development activities. Paragraph (e) discusses the use of CDBG funds for financial assistance to a private, for-profit entity. It contains the same standards governing the use of CDBG funds for the direct provision of financial assistance to private, for-profit entities as the Entitlement program.

As in the Entitlement program, the proposed text would require the preparation of a financial analysis to determine that the extent of any financial assistance to be provided is not excessive, taking into account the actual needs of the business in making the project financially feasible and the extent of public benefit expected to be derived from the project. HUD recognizes that the financial analysis may involve some subjective judgment. States will be expected to document the basis for the deteminations as jointly agreed upon with States. HUD will review this documentation to determine if the financial analysis has been conducted and the determinations are reasonable. The proposed text would also make clear that such a determination is required to be made even if the assistance is provided to a for-profit business through a subrecipient.

Proposed § 570.483(e) would permit, under certain circumstances, financial assistance to be provided to a for-profit business solely for job training costs of newly-hired employees where the training is necessary because of lack of skilled workers in the labor market. Such assistance could be provided when the determination is made that the amount of assistance is reasonable considering the added costs expected to be incurred by the business as a result of employing such persons to fill newly created jobs resulting from the establishment of a new business or expansion of an existing business. This means it would not be necessary to perform the more elaborate financial analysis otherwise required before financial assistance is provided to a for-profit business.

Special activities by certain subrecipients. The eligibility of activities carried out by certain subrecipients (neighborhood-based nonprofit organizations, small business investment companies under section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d), and local development companies) under section 105(a)(15) of the Act is discussed at § 570.483(f). In accordance with the 1987 Amendments, the proposed rule addresses the provision of assistance (including loans and grants) to such subrecipients for the purposes of carrying out a neighborhood revitalization, community economic development or energy conservation project. Under the proposed rule, such projects may include activities listed as eligible under section 105(a) of the Act and activities that are not otherwise eligible under the Act except those specifically described at § 570.483(i) (see discussion below). Subrecipients, however, would be subject to the limit on administrative and planning costs described at § 570.490(a) when funds are used for planning or administration, and to the requirements of § 570.483(e) when the subrecipient provides assistance to a private, for-profit business. Public service activities carried out by special subrecipients are not subject to the 15 percent limitation.

Planning costs. The local governments may undertake an analysis of impediments to fair housing choice as a step toward fulfilling their certifications to affirmatively further fair housing. It should be noted that the cost of undertaking this analysis would be an eligible planning expense.

Program administrative costs. Proposed paragraph (h) would describe eligible local administrative costs and carrying charges for CDBG funds expended by units of general local government. Program administrative costs do not include staff and overhead costs directly related to carrying out eligible CDBG activities, since these costs are eligible as part of the activities.

Ineligible activities. Paragraph (1) lists specific activities that are ineligible. These activities include buildings for the general conduct of government; general government expenses; political expenses; and costs not allowable under State cost principles.

Limited eligibility activities. Paragraph (k) describes the circumstance under which new housing construction and income payments may be eligible activities. Under the proposed rule, CDBG funds may be used for the construction of permanent residential structures or for programs to subsidize or assist such new construction if the construction: is authorized for last resort housing under 24 CFR part 42; is authorized for rehabilitation or development of housing assisted under section 17 of United States Housing Act of 1937; or is carried out by a subrecipient under § 570.483(f);

CDBG funds may only be used for income payments for subsistence or housing needs of persons as part of a neighborhood revitalization project carried out by a subrecipient under the provisions of § 570.483(f). Income payments include payments for down payments, rent deposits, mortgage and rent subsidies, utilities and welfare type payments. Such payments are eligible under Federal programs other than CDBG (e.g., Section 8 Housing Assistance Payments program, and programs administered by the Department of Health and Human Services). However, a one-time payment made on behalf of persons to meet emergency needs would be eligible as a public service under § 570.483(b)(5).

Section 570.484—Addressing National Objectives

General. Proposed § 570.484 describes the criteria used to determine whether an eligible activity addresses one or more of the national objectives in section 104(b)(3) of the Act (see § 570.484(a)).

Activities benefitting low and moderate income persons. Proposed § 570.484(b) discusses the national objective of benefiting low and moderate income persons. Generally, an eligible activity will address this objective if it meets one of five described criteria including: Area benefit activities, limited clientele activities, housing activities, job creation or retention activities, or planning only activities. However, in cases where an activity technically meets one or more of the described criteria, but there is substantial evidence that the activity does not principally benefit low or moderate income persons, the presumption that the activity meets this national objective will be rebutted. In assessing evidence, HUD would consider all direct effects of the activity. For example, the presumption would be rebutted if there is a negative effect on low and moderate income persons, if there is a predominate benefit to persons other than low and moderate income persons, or if there is a substantial impediment to low and moderate income persons receiving the benefit of the activity.

a. Area benefit activities (§ 570.484(b)(1)). Under the proposed rule, an activity the benefits of which are available to all residents of a particular area would meet the requirement if at least 51 percent of the residents of the area are low and moderate income persons. An activity would not qualify as an area benefit activity based on whether it is located in a low and moderate income area. Rather, the activity would be judged on the basis of the area served by the activity. The designation of the area served by the activity is critical. There must be a reasonable basis for defining the service area, taking into account the nature and accessibility of the activity and the availability of comparable facilities to serve the area.

Most area benefit activities have traditionally been public improvements and facilities activities. However, these activities are not the only types which may be undertaken on an area-wide basis. For example, commercial establishments serve defined areas, and activities to revitalize these commercial establishments can be justified on the basis of that service area, if it can be demonstrated that the area is at least 51 percent low and moderate income in character.

To establish that 51 percent of the residents of an area are low and moderate income persons, the proposed rule would permit the unit of general local government, at the discretion of the State, to use HUD-provided census data indicating the percentage of low and moderate income persons in defined areas, or other data agreed to by HUD and the States in the consultation process.

The Appropriations Act contained a provision which amended section 105(c)(2) of the Act. The provision recognizes the expenditure of CDBG funds to meet the national objective of benefit to low and moderate income persons where the CDBG assistance for a public improvement that provides benefits to all the residents of an area is limited to paying special assessments levied against properties owned and occupied by persons of low and moderate income. "Special assessment" is defined in the regulations at § 570.481.

The effect of this provision is to permit a local government to pay for part of the cost of a public improvement which serves an area where less than 51 percent of the residents are low and moderate income persons so long as the CDBG assistance is limited to paying the special assessments levied against properties owned and occupied by such persons and to qualify such payments as meeting the national objective of benefiting low and moderate income persons.

Proposed § 570.484(b)(1)(ii) sets forth an exception to the area benefit criteria. This provision, which implements a change contained in the 1987 Amendments, describes the conditions under which CDBG assistance may be provided to develop, establish and operate (for not to exceed two years after the establishment) a uniform emergency telephone number system. While this exception permits the provision of CDBG assistance to serve an area where low and moderate income persons comprise less than 51 percent of the population, the rule requires that at least 51 percent of the use of the system must be by low and moderate income persons. (If a Uniform Emergency Telephone number system for which assistance is requested will serve an area with 51 percent low and moderate income persons, the activity would be judged based on the standard area benefit criteria, and the telephone system would not qualify under the criteria of paragraph (b)(1)(ii).)

To qualify under the Uniform Emergency Telephone Number System exception, the unit of general local government would need to obtain HUD's written determination. HUD's determination will be based on the state's certification that: (1) The system will contribute substantially to the safety of the residents of the area served by the system; (2) not less than 51 percent of the use of the system will be by persons of low and moderate income; and (3) other Federal funds received by the local government are not available for the development, establishment, and operation of the system due to the insufficiency of the amount of the funds, restrictions on the use of the funds, or the prior commitment of the funds for other purposes by the local government. To permit the State to make its certifications, the unit of general local government would submit the following information to the State:

—A list of the Jurisdictions and unincorporated areas served, a list of participating emergency services, and a statement describing how the system will substantially contribute to the safety of the residents to be served;

—Data demonstrating that at least 51 percent of the users of the system will be low and moderate income persons;

—A statement explaining how the need for Federal funds for the system is due to the insufficiency of the amount of other funds, the restriction on the use of such funds, or the prior commitment of such funds for other purposes; and

—A description of the boundaries and demographics of the service area of the system.

The State's certifications must be accompanied by a brief statement describing the basis upon which the certifications were made. Under this proposal, each activity conducted in association with the system must qualify as an eligible activity using appropriate limitations. For example, staff development, and the purchase of computer and telephone switching equipment, would be public service activities.

b. Limited clientele activities (§ 570.484(b)(2)). Activities that do not serve an area generally and which, because of their specialized nature serve a limited clientele, may qualify under the national objective of benefiting low and moderate income persons, if at least 51 percent of the persons to be served are low and moderate income. An activity serving a limited clientele would meet this requirement if:

—The activity benefits a clientele that HUD has determined may generally be presumed to be comprised principally of persons of low and moderate income. Facilities designed for and used by abused children, battered spouses, elderly persons, handicapped persons, homeless persons, illiterate persons and migrant farm workers are presumed to meet this test, absent evidence to the contrary. The effect of this presumption is to eliminate the need to collect and maintain income information. (Where there is substantial evidence that this presumption is incorrect with regard to a specific facility, the State would not be permitted to apply the presumption); or

—Beneficiaries are required to provide information on family size and income so that it can be shown that all or at least 51 percent of the clientele are persons whose family income does not exceed the low and moderate income limits; or

—The activity is of such a nature and in such a location that it may reasonably be concluded that the activity's clientele will primarily be low and moderate income persons.

Most public improvements (streets, sidewalks, curbs, gutters, trees, street lights, water lines, sewers, drainage improvements, parks and playgrounds) and public buildings such as public schools, libraries, and fire stations will benefit an area generally, rather than benefit a limited clientele. Commercial establishments also serve a particular area and usually benefit the area generally. Other public buildings must be examined on a case-by-case basis. Facilities to be used as centers for senior citizens or handicapped persons, or as shelters for the homeless would be considered to serve a limited clientele. A multipurpose community center might qualify either way, depending on the location and use of the building.

Under proposed § 570.484(b)(2)(ii) limited clientele activities would also include special projects to remove material and architectural barriers that restrict accessibility of elderly and handicapped persons to nonresidential buildings, facilities and improvements, and the common areas of residential structures containing more than one dwelling unit. HUD would consider such projects to be limited clientele activities since the activity is clearly designed to meet the unique needs of such persons, even though benefits of increased accessibility may also incidentally accrue to the nonhandicapped and nonelderly persons.

c. Housing activities. Activities that involve the acquisition, construction or rehabilitation of property for housing including conversion of non-residential structures, reconstruction and new construction, would benefit low and moderate income persons only if the housing will be occupied by low and moderate income persons and, where applicable, rents are affordable to low and moderate income persons.

The proposed rule details how this requirement would be applied to multifamily structures and single family housing units as well as owner occupied and rental housing.

The rule provides for the new construction of non-elderly rental housing when at least 20 percent of the units will be occupied by low and moderate income persons with further specific limitations.

The proposed rule reflects current policies regarding the standard used in the Entitlement program to determine when a unit is occupied by a low and moderate income person. Under the proposed rule the low and moderate income determination would be based on the income of the entire household occupying the units involved. "Household" means all the persons who occupy a housing unit. The occupants may be a family, one person living alone, two or more families living together, or any other group of related or unrelated persons who share living arrangements. Low and moderate income status for the household is determined by aggregating income for all members of the household and then comparing the aggregated income against the family income limit, used to administer HUD's section 8 housing assistance program.

d. Job creation or retention activities (§ 570.484(b)(4)). This proposed section describes the circumstances under which activities designed to create or retain jobs may be considered to meet the objective of benefit to low and moderate income persons. The section would implement a 1983 Amendment to section 105(c)(1)(C) of the Act which states that such activities must "involve the employment of persons, the majority of whom are persons of low and moderate income in order to qualify based on the jobs."

HUD has provided guidance on activities that create or retain jobs. The proposed regulation is generally based on the guidance and on the CDBG Entitlement regulation (§ 570.208).

Planning-only grants (§ 570.484(b)(5)). State may make a grant to a unit of general local government solely for planning activities if the planning activity meets a national objective. Proposed § 570.184 (b)(5) covers planning activities that address the national objective of benefitting low and moderate income persons. This objective would be met if: (1) At least 51 percent of the persons who would benefit from the implementation of the plan are low and moderate income persons or (2) the planning activities involve an area or a community in which 51 percent of the persons are low and moderate income. These criteria are also applicable in cases where a planning activity is one of several activities funded through a single grant and when the planning activity is unrelated to any other activity funded by the grant. While there must be a reasonable expectation that the planned activity will be carried out, the proposed rule does not require the unit of general local government to implement the planned activity.

Activities which aid in the prevention or elimination of slums or blight. Proposed § 570.484 establishes criteria for determining whether activities will be considered to meet the national objective of aiding in the prevention or elimination of slums or blight. (See section 104(b)(3) of the Act.) The proposed rule addresses area activities, spot activities, activities within an urban renewal area, and planning activities.

a. Area activities (§ 570.484(c)(1)). To meet this national objective on an "area" basis, four requirements must be met:

—The area must be delineated by the unit of general local government and must meet a definition of slum, blighted, deteriorated or deteriorating area under State or local law;

—Throughout the area, there must be a substantial number of deteriorated or deteriorating buildings or public improvements in a general state of deterioration at the time of such designation. HUD recognizes that public improvements may be so deteriorated that they constitute a genuine threat to the viability of an area by discouraging private investment necessary to maintain the properties. Accordingly, the proposed rule permits the consideration of the condition of public improvements, even though deteriorated public improvements by themselves may not yet have affected the properties to the point that they are deteriorating.

—Documentation is maintained describing the boundaries of the area and the conditions in the area at the time of the designation as a slum,

blighted, deteriorated or deteriorating area; and

—The assisted activity addresses one or more of the conditions contributing to the deterioration of the area. Rehabilitation of residential buildings would address the conditions contributing to the area's deterioration only where: (1) Each rehabilitated building is substandard before rehabilitation under the locality's minimum standards for building quality; and (2) all substandard conditions are treated if less critical work is being undertaken.

Spot activities (§ 570.484(c)(2)). Acquisition, demolition, rehabilitation, relocation and historic preservation activities eliminating specific conditions of blight or physical decay on a "spot" basis may address the national criteria of aiding in the prevention or elimination of slums or blight under the circumstances described in § 570.484(c)(2). Rehabilitation of buildings would be limited to those necessary to eliminate specific conditions detrimental to public health and safety. Rehabilitation of public improvements would not be permissible under this provision.

Activities within urban renewal areas (§ 570.484(c)(3)). The proposed rule addresses the treatment of slums and blight in the few uncompleted urban renewal areas. Under the proposed rule, an activity would address the prevention or elimination of slums or blight if the activity is located within a Federally assisted urban renewal project area or Neighborhood Development Program action area, and the activity is necessary to complete an urban renewal plan that remains in effect. Activities necessary to complete a plan would include initial land redevelopment under the plan. Once a property has been developed or redeveloped in accordance with the plan, however, future development of the same property is not considered as necessary to complete the plan.

Planning only activities (§ 570.484(c)(4)). Planning only activities would address the national objective of prevention or elimination of slums or blight if the plans are for a blighted area, or if all elements of the planning are necessary for and related to an activity which, if funded, would meet one of the criteria for elimination of slums or blight.

Activities designed to meet community development needs having a particular urgency. Proposed § 570.484(d) describes activities that are designed to meet community development needs having a particular urgency. Section 104(b)(3) of the Act requires the State to certify that it will give maximum feasible priority to activities that benefit low and moderate income persons or address the prevention or elimination of slums or blight. While activities designed to meet urgent needs are permitted as an exception, HUD anticipates that such activities, by their very nature, will be conducted infrequently.

Under the proposed rule, an activity would address this objective if the unit of general local government certifies, and the State determines, that:

—The activity is designed to alleviate existing conditions that are a serious and immediate threat to the health or welfare of the community. The conditions must be of recent origin or must have recently become urgent. A condition will generally be considered to be of recent origin if it developed or became urgent within the 18 months preceding the certification by the unit of general local government;

—The unit of general local government cannot finance the activity on its own; and

—Other sources of funding are not available.

Additional provisions. Proposed § 570.484(e)(1) provides criteria for determining when acquisition or disposition of real property will address a national objective. Paragraph (e)(2) of this section states the criteria for determining when relocation assistance will meet a national objective. Paragraph (f) will state that planning and administrative costs incurred by units of general local government in conjunction with CDBG assisted activities will be considered to address the national objectives.

Section 570.485—Overall Benefit to Low and Moderate Income Persons

General. Section 104(b)(3) of the Act, as revised by the 1983 and 1987 Amendments and Cranston-Gonzalez Act, is implemented by § 570.485. This section would require an authorized State official to certify that not less than 70 percent of the total CDBG funds, during a period specified by the State of not more than three years, will be used for activities that benefit low and moderate income persons (see § 570.484). The proposed rule provides that the period selected and certified by the State must be designated by fiscal year of annual grant, must be for one, two or three consecutive annual grants, and must be in effect until all included funds are expended.

Computation. The overall benefit requirement would be computed by applying 70 percent to the total of the designated annual grants, any funds reallocated by HUD to the State, and any distributed program income covered in the method of distribution in the Final Statement for the designated annual grants. CDBG funds used by the State or by the units of general local government, however, for program administration, or for planning costs (except planning only grants to units of general local governments) would be excluded from the calculation.

CDBG funds used for activities benefitting low and moderate income persons would count in their entirety toward meeting the 70 percent requirement, except that funds expended for the acquisition, construction or rehabilitation of property for housing under § 570.484(b)(3). These funds would be counted toward the 70 percent requirement, but limited to the extent that the housing, upon completion will be occupied by low and moderate income persons.

The requirement of § 570.485 differs from the requirement that 51 percent of the persons benefitting from a CDBG activity must be low or moderate income in order to meet the national objective of benefitting such persons (see § 570.484). Section 570.484 requires each activity to meet a national objective, one of which is to benefit low and moderate income persons. Section 570.485, on the other hand, is a requirement governing the aggregate use of CDBG funds over a one-, two- or three-year period.

Section 570.486—State Submission and State Citizen Participation Requirements

Submission and certification requirements. Proposed § 570.486 sets forth the information that the State must submit to HUD before March 31 of each Federal fiscal year. This section requires States to submit a final statement and certain specified certifications.

Final statement. Under proposed § 570.486, the State would be required to submit a final statement that includes a statement of the State's community development objectives and the method by which the State will distribute CDBG funds to units of general local government.

The method of distribution would cover the following funds: (1) The annual grant; (2) any funds recaptured by the State from units of general local government to be redistributed to other local governments, if redistribution is to be governed by this method of distribution rather than that originally described in the final statement for such

funds; (3) any funds that are reallocated to the State by HUD at the time the annual grant is awarded; and (4) any program income that is distributed by the State during that time period (see § 570.486(a)(1)(ii)).

To assure that HUD and units of general local government are adequately informed of the actual means by which selections are to be made, the proposed rule would require the State to fully describe its methods of selection. The rule provides that comparative, first-in, formula or other distribution methods may be used. The submission must include a complete description of the method (incorporation by reference to other documents would not be acceptable) and must include:

—A description of all criteria used to select applications for funding, including any relative weights assigned to the criteria. This provision should not, however, be interpreted to restrict selection methods to competitions.

—A statement describing either the amount of funds that will be allocated to each funding category (e.g., economic development activities) or the method the State will use to make such allocations.

—A description of all performance standards, threshold requirements and grant limitations. This requirement is appropriate since the described standards, requirements and limitations may restrict a community's ability to apply and receive funds under the program.

States would be required to retain documents demonstrating that the selections were made in accordance with the described method of distribution. HUD has a statutory obligation to review the distribution as a part of the review of State performance.

Certifications. In addition to the final statement, proposed § 570.486(a)(2) requires the State to make the certifications required under section 104(a)(3), section 104(b), and section 106(d)(2) (C) and (D) of the Act, the certification on drug-free workplaces (see 24 CFR part 24, subpart F), and 24 CFR part 87 regarding lobbying activities. The proposed rule reflects a 1987 Amendment to section 104(d)(2) of the Act which deleted the requirement that the certification must be made by the Governor of the State. Thus, all certifications submitted by the State with the final statement may be made by the authorized State official. The proposed certifications would be satisfactory to HUD if made in compliance with the requirements of § 570.487, in the absence of independent evidence which tends to challenge the certifications in a substantial manner. If such information is available to HUD, however, HUD may require further information and assurances (see § 570.486(b)).

Election to participate in program. The existing rules imposed an additional submission requirement, the submission of an election to receive funds during the month of July preceding the fiscal year (see existing § 570.490(a)). This requirement has been eliminated from the proposed rule because it is unduly burdensome in view of the overwhelming participation by States in the program (49 States now participate). Moreover, HUD believes that a routine notification process is unnecessary since, based on section 106(d)(3)(C) of the Act, elections in the future will be rare. Section 106(d)(3)(C), as amended by the 1983 Amendments, provides that funds will be lost to a State, if a State that previously administered the program chose not to.

HUD notes, however, that proposed § 570.486(d) would provide that the failure to make the required submissions and certifications by March 31 (HUD field offices may extend this deadline by up to 60 days) will constitute an election not to receive and distribute amounts allocated for the State's non-entitlement areas for the fiscal year. Funds will be reallocated as described in § 570.498 below.

Citizen participation requirements. The 1987 Amendments revised section 104(a) of the Act by adding new citizen participation requirements. Citizen participation requirements are now addressed at section 104(a) (2) and (3) of the Act.

Section 104(a)(3) provides that a grant under section 106 may be made "only if the grantee certifies that it is following a detailed citizen participation plan" which provides: Citizen participation, especially among low and moderate income persons; citizens with access to meetings and information on the grantee's proposed use of funds; technical assistance to low and moderate income groups; public hearings and timely written answers to written complaints; and identification of how the needs of non-English speaking residents will be met.

One interpretation of section 104(a)(3) is that it permits the division of responsibility for fulfilling the citizen participation requirements between the State and the unit of general local government. A strict interpretation imposing all section 104(a)(3) responsibilities at the State level would be unreasonable and impractical since the statutory responsibilities include many matters that are best addressed at a local rather than State-wide level or that are constructive only in the context of local decision making. For example, section 104(a)(3)(D) of the Act requires the grantee to hold public hearings to obtain citizens views and to respond to proposed activities. Since States do not propose activities or develop applications based on the proposed activities, public hearings by States on proposed activities would be of little practical value. Similar problems and impracticalities can be cited with regard to each of the citizen participation requirements under section 104(a)(3).

Therefore the congressional intent with regard to section 104(a)(3) would be fulfilled by requiring States to develop a written plan that requires each local government to carry out citizen participation in a manner that satisfies each element of section 104(a)(3) of the Act (see discussion of § 570.487(c) below). The written plan developed by the State should describe how a unit of general local government would meet each element of section 104(a)(3) of the Act.

In addition to the section 104(a)(3) citizen participation requirements, the proposed rule would require States: (1) To consult with local elected officials from among units of general local government in determining the State's method of distribution in its final statement; (2) to furnish citizens with information concerning the amount of the CDBG funds available for proposed community development and housing activities; (3) to hold one or more public hearings to obtain the views of citizens on community development and housing needs; (4) to publish a proposed statement in such a manner to afford citizens and units of general local government an opportunity to submit comments on the proposed statement, the community development performance of the State; (5) to provide citizens and units of general local government with reasonable and timely access to records regarding proposed and past use of CDBG funds; and (6) to make the final statement available to the public when the statement is submitted to HUD.

Amendments to final statement. Proposed § 570.486(e) addresses amendments to final statements following HUD's grant award to the State. The proposed section reflects section 104(a)(2), as revised by the 1983 Amendments. The proposed section would ensure that units of general local government will receive notice of, and an opportunity to comment on, proposed

changes to the final statement before the changes are implemented.

Section 570.487—Local Government Requirements

Certifications. The 1983 and 1987 Amendments to the Act require units of general local government to submit certifications to the State before the State may distribute CDBG funds to the locality. In addition, the Cranston-Gonzalez Act amends the Act to provide that no CDBG funds may be given to a local government that fails to adopt and enforce a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations or fails to adopt and enforce a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such nonviolent civil rights demonstration within its jurisdiction. The new statutory provision is implemented by a certification by the locality. The unit of general local government must certify that: (1) The locality will minimize displacement of persons as a result of activities assisted with the CDBG funds; (2) the program will be conducted and administered in conformity with various civil rights requirements and the locality will affirmatively further fair housing; (3) the locality will fulfill the citizen participation requirements (see discussion below); (4) public improvement assessments will meet various requirements; (5) the locality is following a residential antidisplacement and relocation assistance plan as required under § 570.489; (6) the locality has adopted and is enforcing a policy prohibiting the use of excessive force and a policy enforcing laws against physically barring entrance to covered facilities; The locality must also make the certifications required in appendix A to 24 CFR part 87 regarding restrictions on lobbying and in appendix B to 24 CFR part 24 regarding debarment and suspension.

Local needs identification. Under section 106(d)(2)(D) of the Act, the State is required to certify that each unit of general local government to be distributed funds will be required to identify its community development and housing needs, including the needs of low and moderate income persons, and the activities to be undertaken to meet such needs. The State's certification requirement is imposed at § 570.486(a)(2).

The proposed rule at § 570.487(b) would require the unit of general local government to identify its needs before it submits an application for CDBG funding. HUD encourages States to work with localities to establish procedures and guidelines to facilitate the identification of needs. HUD does not intend that units of general government develop complex or detailed planning documents.

Citizen participation requirements. The citizen participation requirements applicable to units of general local government are discussed at proposed paragraph (c). This paragraph would integrate the citizen participation requirements imposed under section 104(a) (2) and (3) of the Act and include requirements that the locality must provide a minimum of two public hearings to obtain citizens' views and to formulate proposals and respond to questions. Related State citizen participation requirements are discussed at § 570.486(c).

Additional State requirements. Paragraph (d) of the proposed rule would permit States to impose additional reasonable application requirements.

Multijurisdictional grants. Section 102(a)(1) of the Act defines "unit of general local government" to include a combination of general purpose political subdivisions recognized by the Secretary. Paragraph (e) describes the circumstances under which HUD would recognize a combination and permit a State to make a grant to a combination. Under the proposed rule, one of the participating units of general local government would apply for the grant and act as the representative for the other participating units. Although each participating local government must make required certifications, the representative unit of general local government is responsible for ensuring that the approved activities will be carried out in accordance with the CDBG requirements.

Grants to combinations (multijurisdictional grants) may be made where the residents of more than one unit of general local government will benefit from the CDBG activity, and no more than 51 percent of the beneficiaries are located within the jurisdiction of one participating unit of general local government. This provision would not limit the ability of a county to apply for and carry out activities within the jurisdiction of a unit of general local government within the county.

Beneficiaries residing in two or more localities. Paragraph (f) addresses cases where a proposed activity will serve beneficiaries that reside in two or more units of general local government and where more than 51 percent of the beneficiaries of an activity are located within the jurisdiction of one such unit. Under such circumstances, the State would be permitted to make a grant to the unit in which more than 51 percent of the beneficiaries reside. Such a grant may be made without regard to whether the activity is to be located in or outside of the local government's jurisdiction or even whether the activity will be located in a CDBG Entitlement program grantee's jurisdiction.

Section 570.488—Other Applicable Laws and Related Program Requirements

Section 104(e)(2) of the Act requires HUD to determine whether the grantee has carried out its certifications in compliance with the requirements and the primary objectives of the Act and with other applicable laws. Proposed § 570.488 (which is based on existing § 570.496) lists the laws that HUD will consider in making this determination. Additional unlisted statutes and executive orders for which HUD has no direct enforcement authority may also apply to activities assisted under the Act (see § 570.488(a)).

Proposed paragraphs (b)(1) and (b)(2) provide that Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d, *et seq.*) and Title VIII of the Civil Rights Act of 1968 (42 U.S.C. 3601.19) (the Fair Housing Act) and HUD's regulations implementing these Acts are applicable. The proposed rule reflects the two new protected classes (handicap and facial status) that were added to the Fair Housing Act by the Fair Housing Amendments Act of 1988 (Pub. L. 100–430, approved September 13, 1988).

Paragraph (b)(3) would state that Executive Orders 11063 and 12259 (Nondiscrimination and equal opportunity in housing) and HUD's implementing regulations at 24 CFR part 107 are applicable to grants under subpart I.

Paragraph (b)(5) would implement section 109 of the Act (as amended by section 912 of the Cranston-Gonzalez Act) which states that no person in the United States shall on the grounds of race, color, national origin, religion or sex be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with funds made available under CDBG programs. Section 109 also prohibits discrimination on the basis of age or handicap. The proposed rule substantially includes the section 109 provisions adopted at § 570.602 for the CDBG Entitlement program rule with appropriate revisions to reflect the State program.

Section 104(c), added by the 1983 Amendments, requires the State to certify that it will affirmatively further fair housing. Section 106(d)(5), also added by the 1983 Amendments, states that no funds may be distributed by the State to any unit of general local government unless the locality certifies that it will affirmatively further fair housing. These requirements would be implemented by proposed paragraph (c).

Proposed paragraph (c)(2) contains review criteria for the State and local governments with respect to affirmatively further fair housing. The State's review criteria for affirmatively furthering fair housing would be listed in (c)(2)(i). The review criteria are performance standards that BUD will use to determine if States are fulfilling their certification to affirmatively further fair housing. HUD is presenting the list of actions for States as a "safe harbor." If States carry out the actions in this section, HUD will consider that the State has met its affirmatively further fair housing certification. However, a State may take other actions not listed in (c)(2)(i) provided its actions are determined to be acceptable to HUD.

The review criteria critical listed in this section include conducting training on Federal and State fair housing laws, providing technical assistance to units of general local government on conducting the local analysis of impediments to fair housing choice, and on overcoming any identified impediments. States may determine statewide nonentitlement area impediments to fair housing choice and take action, statewide or with units of general local government, to overcome any impediments. States may also work actively with existing entities to further fair housing.

Similarly, HUD has included review criteria for local governments that may be regarded as a "safe harbor". If a local government prefers to take actions other than those listed in (c)(2)(ii), its actions must be acceptable to the State.

Local government's review criteria for affirmatively furthering fair housing would include conducting an analysis to determine the local impediments to fair housing choice in several areas listed in (B)(i). HUD would not expect local governments to carry out an extensive, costly analysis, but rather an analysis of sufficient scope to reflect the size and complexity of the unit of general local government. The unit of general local government would then take steps to overcome any identified impediments to fair housing choice. Several steps for overcoming such impediments Act enumerated in (B)(ii).

Proposed paragraph (d) would implement section 110 of the Act which governs labor standards. It incorporates requirements currently included in the State CDBG regulations at § 570.496(c), with a modification to reflect section 523 of the 1987 amendments.

The applicability of the National Environmental Policy Act and other environmental laws and Executive Orders is addressed at proposed paragraph (e). The proposed rule reflects the environmental responsibilities of the State addressed in existing § 570.495, and the environmental standards contained in existing § 570.496(d), including HUD's implementing regulations at 24 CFR part 58. No substantive changes are proposed.

Lead Based Paint Poisoning Prevention Act (LBPPPA) requirements and the applicability of HUD's LBPPPA requirements (24 CFR part 35) are incorporated in paragraph (f).

This proposed section discusses prohibition against the use of lead-based paint in residential structures constructed or rehabilitated with CDBG funds (see current § 570.496(f)), notification of hazards of lead-based paint poisoning, and elimination of lead-based paint hazards. Proposed § 570.488(f) is similar to lead-based paint regulations for the Entitlement and Rental Rehabilitation Programs.

The Secretary has promulgated requirements regarding the elimination of lead-based paint hazards in HUD-associated housing at 24 CFR part 35, subpart C. Because of 1988 and 1989 advancements in the testing and abatement technology derived from HUD-sponsored studies and demonstrations, it is anticipated that subpart C will be amended. Pending such amendment, the provisions at § 570.488(f)(3)(i)–(3)(ix) are proposed to be followed pursuant to the authority in 24 CFR 35.24(b)(4).

Paragraph (g) discusses actions to encourage participation to minority and women's business enterprises in accordance with Executive Orders 11625, 12432, and 12138.

Employment and contracting opportunities requirements are discussed at paragraph (h). Paragraph (h)(1) addressed the applicability of Executive Order 11246 which prohibits discrimination in employment under Federal or federally assisted construction contracts. Paragraph (h)(2) includes the provisions of existing § 570.496(e) which govern the applicability of section 3 of the Housing and Urban Development Act of 1968.

Section 570.489—Relocation, Acquisition and Antidisplacement

The Uniform Relocation Assistance and Real Property Acquisition Policies Act of 1970, as amended (URA) covers all persons (families, individuals, businesses, nonprofit organizations or farms) displaced (moved permanently and involuntarily) as a direct result of public or private action to rehabilitate, demolish or acquire property for a federally-assisted project. (Before April 2, 1989, under the State CDBG Program, the URA applied only to public agency acquisition and resulting displacement.) On March 2, 1989, the Department of Transportation published in the **Federal Register** (54 FR 8912) a final government-wide rule (49 CFR part 24) implementing the URA. The government-wide rule applies to all such displacement and real property acquisition occurring on or after April 2, 1989. State grantees are reminded that the expanded URA coverage (effective April 2, 1989) modified the interim rule at 24 CFR 470.496a(a). States were informed of the new requirements in Notice CPD 89–23, dated March 16, 1989. Local governments must carry out program activities in compliance with 49 CFR part 24. On July 18, 1990, HUD implemented the URA changes in a final rule for the State CDBG program (see 55 FR 29296). Since these provisions have already undergone notice and comment rulemaking, HUD has decided not to republish the URA provision in this proposed rule. Instead, the Department have reserved § 570.489 for the URA provisions that are applicable to the State CDBG program, and will incorporate these provisions into the final State CDBG program rule.

Section 570.490 Program Administration Requirements

Proposed § 570.490 revises existing requirements governing administrative costs, grant payments and program income (see existing § 570.493 and § 570.494). The section also includes new administrative provisions necessary to implement statutory changes or to more clearly specify basic administrative and financial management requirements.

Administrative and planning costs. Proposed § 570.490(a) would implement section 106(d)(3)(A) of the Act which provides that a State that receives and distributes CDBG funds is responsible for the administration of the funds distributed and that the State is responsible for the payment of all administrative costs from its own resources, except that:

—The State may use up to $100,000 of the CDBG grant for such expenses (see section 106(d)(3)(A)). This $100,000 exception is not subject to a matching requirement;

—In addition to the $100,000 exception, the State may use up to 2 percent of the total of the CDBG grant, the program income received by a unit of general local government, (whether the program income is retained by the local government or paid to the State), and any funds reallocated to the State by HUD. These additional funds, however, must be matched on a dollar for dollar basis with State funds. The proposed rule establishes the accounting period for administrative costs to coincide with the period covered by the annual performance and evaluation report.

This paragraph also implements provisions contained in HUD's annual appropriations acts which place a ceiling on the total amount of funds that the State and the units of general local government may use for planning, management and administrative costs. Under the proposed rule this ceiling is 20 percent of the total of the annual grant, program income, and funds reallocated by HUD to the State and distributed during the effective period of the final statement covering the allocation. To the extent that the State uses funds within the $100,000 and 2 percent limitations discussed above, such expenditures are included in the computation of the 20 percent limit. The 20 percent limitation, however, applies to the State as a whole and thus does not foreclose one unit of general local government from having administrative or planning costs in excess of 20 percent of the local government's grant from the State.

Under current procedures, the base figure for the two and 20 percent limitations are calculated by excluding program income received at the local level and not returned to the State. The proposed rule would revise this policy to permit this program income to be included in the calculation. The inclusion may be justified based on the expense and effort necessary for the State to distribute and manage these additional funds.

Under the proposal, States may not charge any fee related to the processing or consideration of any application for CDBG funds, or for the State's performance of any CDBG statutory or regulatory responsibilities. Fees and charges at the State level may be inconsistent with the provisions of the Act. The proposed rule would, however, not preclude units of general local government from charging fees for the preparation, processing or consideration of applications for CDBG funds. Localities have charged for-profit businesses an application processing fee and HUD believes this approach would be permissible given the limited resources which non-entitled units of general local government have available to implement and administer the CDBG program.

Reimbursement of pre-agreement costs. Paragraph (b) is a new provision addressing the reimbursement by the State of costs that were incurred by a unit of general local government before entering into a formal grant agreement. This paragraph would codify the preagreement cost principle contained in opinions of the Comptroller General. This provision reflects HUD's decision to permit approval of preagreement cost reimbursement if the activity would otherwise meet subpart I requirements. Under the proposed rule, reimbursement would be limited to those costs for which the State provided written authorization before the obligation of funds by the unit of general local government, and has given written approval of the local government's certification of completion of environmental responsibilities. It should be noted that the State's authorization to incur preagreement costs does not constitute a commitment by the State to make a grant to the unit of general local government.

Consultants. Consulting services are addressed in the Department's annual appropriation. This paragraph describes limitations on the use of CDBG assistance for professional consulting services consistent with recent appropriations acts.

Federal grant payments. Paragraph (d) would implement United States Department of Treasury procedures governing Federal grant payments and interest earned on grant funds by units of general local government. These requirements are basically unchanged from existing § 570.494.

Fiscal controls and accounting procedures. Proposed § 570.490(e) requires States to have fiscal and administrative requirements for expending and accounting for all funds received under this subpart. To ensure proper accounting for program funds at the State and local level, these fiscal and administrative requirements must (1) be sufficiently specific to ensure that CDBG funds are used in compliance with all applicable statutory and regulatory provision; (2) ensure that CDBG funds are only spent for reasonable and necessary costs of operating programs under this subpart; and (3) ensure that CDBG funds are not used for general expenses required to carry out other responsibilities of State and local governments.

Program income. Paragraph (g) addresses the treatment of program income by both the State and localities, based on section 104(j) of the Act.

A key concept regarding program income is the definition of the phrase "continue the activity." The Act directs that units of general local government be permitted to retain program income if it is to be used to continue the activity from which it was derived. Currently, CDBG policy provides wide latitude to States to define continuing the activity. This proposed rule would continue to allow States to define "continue the activity." If the activity to be funded with program income would not meet the State's standard, the State may require that the program income be paid to the State.

The paragraph (g)(2) of the proposed regulation implements the statutory provision regarding the applicability of CDBG requirements to program income retained by a unit of general local government. Program income received before closeout of the grant that generated the income is subject to all applicable CDBG requirements. Program income received after closeout of the grant that generated the income is not subject to CDBG requirements unless the local government has another ongoing grant at the time of closeout, in which case the program income continues to be subject to CDBG requirements as long as the local government is participating in the CDBG program, or as long as the State determines.

When program income is used to continue the activity that generated the program income, all applicable CDBG requirements apply as long as the unit of general local government uses the program income to continue the activity, or as long as the State determines.

Revolving funds. Paragraph (h) addresses revolving funds. It sets out separate definitions for revolving funds based on whether the fund is established by the State or local government. Generally, in both cases revolving funds are defined as separate funds (with a set of accounts that are independent of other program accounts) established to carry out specific activities which, in turn, generate payments to the fund for use in carrying out such activities. The proposed rule establishes the conditions under which program income may be reserved to pay for costs covered by the fund.

Procurement. Proposed paragraph (i) would permit the State to use State

procurement procedures and require the State to establish procurement policies and procedures based on full and open competition. Cost-plus contracts would be prohibited. The State must establish standards of conduct for employees engaged in the award or administration of contracts would be prohibited. The State must establish standards of conduct for employees engaged in the award or administration of contracts.

Conflicts of interest. Based on a 1983 review of the Department's control systems, the Secretary determined that the State program should include conflict of interest prohibitions in order to minimize the potential for fraud, waste and mismanagement. Accordingly, conflicts of interest (except conflicts of interest governed under the procurement provisions above) are addressed at paragraph (j). Under this proposal HUD may, at the request of the State, grant an exception to the conflict of interest provisions for State employees, agents, consultants, officers, or officials. Recognizing the State's role in the administration of grants, the rule would also permit the State to give exceptions to the prohibition for units of general local government provided the State documented the decisions and made them available to the public. Threshold requirements for exceptions are described at paragraph (j)(4).

Grant closeouts. Proposed § 570.490(k) States that requirements for timely closeout of grants to units of general local government shall be established by the State, which shall take action to ensure the timely closeout of grants. Given the number of grants made under the State program (approximately 3,500 grants per year), requirements for timely closeout of grants is critical to prudent grant administration and the maintenance of a manageable workload.

Change of use of real property. Proposed § 570.490(1) addresses changes in the use of real property acquired or improved using CDBG funds in excess of $25,000. Under the proposed section, a unit of general local government may not change the use or the planned use of property (or change the intended beneficiaries) from the date that CDBG funds are first expended for the property until five years after closeout of the locality's grant, unless the following conditions are met. In order to change the use of such property, the locality must provide affected citizens with notice of and an opportunity to comment on a proposed change, and:

—The new use of the property must meet one of the national objectives, and the property may not be used for a building for the general conduct of government; or

—The locality must determine that it is appropriate to change the use of the property and make reimbursement. Reimbursement must be made to the State's CDBG program, unless the change in use occurs before grant closeout and the State permits reimbursement of the locality's CDBG program. Reimbursement must be equal to the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisitions of or improvements to the property.

Accountability for real and personal property. Paragraph (m) would state the basic principle that States are responsible for all real and personal property acquired with CDBG funds. This section would require the State to establish and implement requirements governing the use, management and disposition of such property consistent with State law and subpart I.

Debarment and suspension. Proposed paragraph (n) makes applicable the debarment and suspension regulations at 24 CFR part 24. CDBG funds may not be awarded to any persons or entity that has been debarred or suspended from participation in the program.

Audits. States and units of general local government are required to perform audits in accordance with 24 CFR part 44 which implements OMB Circular A–128 and the Single Audit Act of 1984 (35 U.S.C. 7501–7507). Basic principles concerning the State's audits management system are included in proposed § 570.490(o).

Section 570.491—Recordkeeping Requirements

Section 104(e) of the Act, as revised by the 1983 Amendments, required HUD to encourage and assist national associations of State and local governments to develop and recommend uniform recordkeeping, performance and evaluation reporting, and auditing requirements for States and local governments. The Department has developed recordkeeping requirements for the State program in cooperation with eight such groups. These recordkeeping requirements have been followed by the States since 1985.

The proposed rule would provide that HUD will again consult with national associations of states and local governments to establish specific recordkeeping requirements. Such requirements will be the minimum necessary to establish compliance with CDBG requirements and other applicable laws. These recordkeeping requirements would be modified as necessary for the prudent administration of the State program.

The proposed section contains provisions ensuring access to records by the Federal government and ensuring reasonable access by citizens to records regarding the past use of CDBG funds. Record retention is also addressed in this section.

Section 570.492—Performance and Evaluation Reports

Proposed § 570.492 requires the State to submit a performance and evaluation report (PER). The content and form of the report is to be jointly agreed upon by HUD and the States. The PER report must contain information on the use of funds, programmatic accomplishments, the narrative sections, as prescribed in 104(e) of the Act, and Civil Rights data.

Reporting of Civil Rights data, previously optional, would be required based on section 562 of the Housing and Community Development Act of 1987, and section 808(e)(6) of the Fair Housing Act. Section 562 requires HUD to assess the extent of compliance with fair housing requirements, by collecting not less than annually, data on the racial and ethnic characteristics of persons eligible for, assisted or otherwise benefiting under CDBG and other programs. Section 808(e)(6) require HUD to report annually to the Congress and make available to the public data on the race, color, religion, sex, national origin, age, handicap, and family characteristics of persons and households who are participants, beneficiaries, or potential beneficiaries of CDBG and other program assistance. The PER will provide HUD with necessary data to meet these reporting requirements for the State CDBG program. A separate report would be required for each fiscal year grant. The forms are due during September of each year. If the report is incomplete, or, if the report together with information gained during HUD review, fails to provide an adequate basis for making the determinations required under section 104(e)(2) of the Act, HUD may require the State to submit additional information.

Section 570.493—State's Reviews and Audits

Proposed § 570.483 discusses State reviews and audits of units of general local government required by section 104(e)(2) of the Act. The State would be required to take appropriate remedial actions to address noncompliance by units of general local government.

Section 570.494—HUD Reviews and Audits

Under section 104(e) of the Act, HUD is required to make necessary and appropriate reviews and audits, on at least an annual basis, to determine:

- Whether the State has distributed CDBG funds to units of general local government in a timely manner and in accordance with the method of distribution described in its statement,
- —Whether the State has carried out its certifications in compliance with the requirements of the Act and other applicable laws, and
- —Whether the State has made such reviews and audits of the units of general local government as may be necessary and appropriate to determine if they have satisfied the applicable performance criteria. Proposed § 570.494 implements section 104(e) and describes in general terms the information that will be considered in performing the reviews and audits.

Section 570.495—Timely Distribution of Funds by States

Under the Act, HUD must determine whether States have distributed funds to units of general local government in a timely manner. Proposed § 570.495 would establish three standards for timely distributions. These standards reflect HUD's preliminary determinations concerning the amount of time required for States to select quality programs and to complete the distribution process.

HUD has collected data on the distribution of CDBG funds by States since 1985. Based on this data, HUD has issued annual notices since 1986 stating that the minimum acceptable level of performance required placement of 70 percent of funds under contract with the units of general local government within 12 months of the HUD grant agreement with the State. In 1989, the minimum acceptable level of performance was increased to 75 percent. (The desired level of performance in the notices, however, was the placement of 95 percent of the funds under contract within this period.) HUD's data indicates that most States currently surpass the 75 percent standard. Accordingly, the proposed rule would require that at least 75 percent of the State's annual grant be placed under contract with units of general local government within 12 months of the State's signing its grant agreement with HUD. Failure to comply with the 75 percent standard would serve as a basis for a finding by HUD that the State failed to distribute CDBG funds in a timely manner.

Under the second standard, the States would be required to place all of the annual grant under contract with units of general local government within 15 months after signing the grant agreement with HUD. Unlike the 75 percent, minor shortfalls will not necessarily be considered to be inadequate performance, but will be reviewed on a case-by-case basis.

Under the third standard, HUD would review performance to determine whether recaptured funds and program income received by the State are placed under contract with a unit of general local government in an expeditious manner. Although there is no set time frame for placing funds under contract, HUD urges rapid distribution of these funds, and expects the State to take into account the amount of such funds in designing and managing the overall distribution of funds. HUD will review performance on a case-by-case basis.

Section 570.496—Reviews and Audits Response

Proposed § 570.496 lists the actions that may be taken if HUD review and audit results in a negative determination, or if HUD determines that a State or local government has failed to comply with any requirement of subpart I. This section is based on existing § 570.499 with miscellaneous changes. For example, the rule clarifies that the State will be given an opportunity to contest HUD's determination before corrective or remedial action is directed. Consistent with current monitoring practice, the State will be requested to submit a plan for corrective action for each finding.

HUD's ability to condition a grant has been limited by the decision in *City of Kansas City, Missouri* v. *U.S. Department of Housing and Urban Development*, 861 F. 2d 739 (D.C. Cir. 1988). The court held that HUD's authority to condition or reduce a current grant for past noncompliance with the Act is found in section 111 of the Act, not section 104(e). Section 111 requires HUD to give a recipient of assistance an opportunity for a hearing before the section 111 sanction is imposed; section 104(e) does not.

HUD reads the decision to permit conditioning under section 104(e), implemented at § 570.496(a)(6), of a new grant in cases of current noncompliance that will affect the use of the new grant. The proposed regulation, however, would continue the practice in the current regulation that requires HUD to give the State an opportunity for a hearing before grant funds are reduced for failure to meet a condition or any failure to meet CDBG requirements.

The proposed rule describes in greater detail than the current regulations the procedures that apply when HUD determines that the State or local government has failed to comply with the nondiscrimination provisions of section 109 of the Act. (Section 109 nondiscrimination requirements are described at proposed § 570.489(f).)

Section 570.497—Remedies for Noncompliance: Opportunity for Hearing

Proposed § 570.497 makes changes to the current regulation at § 570.499a and would afford grantees additional protections not required by section 111 of the Act. Section 111 would require HUD to give a recipient of assistance an opportunity for a hearing if HUD finds that the recipient has failed to comply substantially with the requirements of the Act, before the imposition of section 111 sanctions. The proposed regulation would require an opportunity for a hearing for all failures to comply with the requirements of subpart I, before remedies in paragraph (b)(1) are taken.

The proposed regulation also more clearly specifies the remedies that HUD may take for a failure to comply with the requirements of subpart I.

Paragraph (b)(1)(i) would implement the authority under section 111(a)(1) for HUD to terminate payments to the State. "Terminate payments" means that HUD will cease making payments available to the State under any funding mechanism, typically pursuant to a termination of the grant.

Paragraph (b)(1)(ii) is the analogue to section 111(a)(2) and would authorize HUD to reduce payments for current or future grants by an amount equal to the amount of CDBG funds distributed or used out of compliance with applicable program requirements. This express provision for the first time in part 570 reaches future grants under section 111 and is in furtherance of the decision in *City of Kansas City* v. *U.S. Department of Housing and Urban Development*, 861 F.2d 739 (D.C. Cir. 1988), which makes it clear that the requirements of section 111 must be used to remedy a State's past noncompliance.

Paragraph (b)(1)(iii) would implement section 111(a)(3) and would authorize HUD to limit the availability of payments to certain activities. Under this remedy, the grant is not reduced, but funds may only be used for activities not affected by the State's noncompliance or for activities designed to overcome the failure to comply.

Subparagraph (b)(1)(iv) would authorize HUD to impose a grant condition in instances where, in accordance with the *Kansas City* case, it would not be appropriate to condition under the authority of section 104(e) of the block grant statute; paragraph (b)(1)(iv) could reach noncompliance which does not affect current and future performance. See proposed § 570.496(a)(6). While conditioning is not expressly mentioned as a section 111 remedy within the statute, the *Kansas City* decision recognized HUD's authority to impose the lesser sanction of grant condition in lieu of terminating or reducing the grant.

Finally, paragraph (b)(1)(v) would implement the authorities of section 104(e) of the Act and involves withholding, reducing, or withdrawing the grant awarded to a unit of general local government. HUD can either take this remedial action directly, or require the State to take the action.

The proposed regulation also gives the recipient 14 days within which to request a hearing, rather than the 10 days specified in the current regulation.

In addition, the regulation would delete the requirement that the State be given an opportunity for an informal consultation regarding the proposed sanctions. This requirement may be unnecessary because the State is given an opportunity, under § 570.496, to contest a finding of noncompliance, as well as the opportunity, under § 570.497, for a formal hearing.

Section 570.498—Reallocation of Funds

Section 570.498 governs the reallocation of funds. Under this section:

—Funds that become available as a result of the imposition of sanctions under § 570.497 against a State would be reallocated to all States in the succeeding fiscal year.

—Funds that become available as a result of the imposition of sanctions under § 570.497 against a unit of general local government, as a result of actions under § 570.911 and § 570.913 against a nonentitled unit of general local government funded directly by HUD or as a result of a close out of a HUD-administered Small Cities grant, would be added to the State's allocation in the fiscal year that the funds become available.

—Funds that become available because a State fails to meet the submission requirements of § 570.486 would be: (1) Administered by HUD under the Small Cities program, if the State did not administer a program during any previous fiscal year, or (2) allocated to all States in the succeeding fiscal year, if the State administered the program in any previous fiscal year.

Other matters

A Finding of No Significant Impact with respect to the environment has been made in accordance with HUD regulations at 24 CFR part 50, which implement section 102(2)(C) of the National Environment Policy Act of 1969. The Finding of No Significant Impact is available for public inspection during regular business hours in the Office of the Rules Docket Clerk, Office of the General Counsel, Department of Housing and Urban Development, room 10276, 451 Seventh Street SW., Washington, DC 20410–0500.

The rule does not constitute a "major rule" as that term is defined in section 1(d) of the Executive Order on Federal Regulations issued by the President on February 17, 1981. An analysis of the rule indicates that it does not (1) have an annual effect on the economy of $100 million or more (2) cause a major increase in costs or prices for consumers, individual industries, Federal, State, or local government agencies, or geographic regions; or (3) have a significant adverse effect on competition, employment, investment, productivity, innovation, or on the ability of United States-based enterprises to compete with foreign-based enterprises in domestic or export markets.

In accordance with 5 U.S.C. 605(b) (the Regulatory Flexibility Act), the undersigned hereby certifies that this rule does not have a significant economic impact on a substantial number of small entities. The rule does not affect the amount of funds provided in the CDBG program, but rather modifies and updates the program administration and procedural requirements to comport with legislation. The Department has prepared and submitted to OMB a Regulatory Flexibility Analysis that assesses the nature and extent of the burden imposed by the proposed State CDBG program rule upon small entities.

The General Counsel, as the Designated Official under Executive Order No. 12606—The Family, has determined that the rule may have a significant impact on family formation, maintenance, or well-being since the community development activities that may be funded under the program may have an overall beneficial impact on families. However, within the broad parameters set by statute and implemented in subpart I, the objectives and methods of distribution of the funds are left to the State after consultation with local governments and citizens. In light of the discretion exercised by the States, HUD does not believe that there is a need for review under the Executive Order.

The General Counsel, as the Designated Official under section 6(a) of Executive Order No. 12611—Federalism, has determined that the proposed rule has Federalism implications since Congress has mandated under the 1974 Act that States be given the option under the State program of administering the Block Grant program for the nonentitlement areas. HUD's interpretation of the 1974 Act, as amended by the 1987 Act, raises Federalism implications concerning the division of local, State, and Federal responsibilities under the State CDBG program, and the level of Federal oversight; vis-a-vis State discretion. As a result, certain provisions of the rule have a direct impact on States, on the relationship between the Federal Government and the States, and on the distribution of power and responsibility among the various levels of government. The Department has prepared and submitted to OMB a Federalism Assessment that addresses the Federalism implications raised by this proposed rulemaking.

The rule was listed as item number 1240 on the Department's Semiannual Agenda of Regulations published October 29, 1990 (55 FR 44530, 44533) under Executive Order No. 12291 and the Regulatory Flexibility Act.

The Catalog of Federal Domestic Assistance program number is 14.228.

List of Subjects for 24 CFR Part 570

Community development block grants; Grant programs: housing and community development; Loan programs: housing and community development; low and moderate income housing; New communities; Pockets of poverty; Small cities.

For the reasons set forth in the Preamble, title 24 of the Code of Federal Regulations would be revised to read as follows:

PART 570—COMMUNITY DEVELOPMENT BLOCK GRANTS

1. The authority citation for 24 CFR part 570 is revised to read as set forth below and any authority citation following any subpart title or section in part 570 is removed.

Authority: Title I, Housing and Community Development Act of 1974, as amended (42 U.S.C. 5300–5320) and section 7(d), Department of Housing and Urban Development Act (42 U.S.C. 3535(d)).

2. Subpart I of 24 CFR part 570 is proposed to be revised as follows:

Subpart I—State Community Development Block Grant Program

Sec.

§ 570.480 General.

(a) This subpart describes policies and procedures applicable to States that elect to receive Community Development Block Grant funds for distribution to units of general local government in the State's nonentitlement areas under the Housing and Community Development Act of 1974, as amended. Other subparts of part 570 are not applicable to the State CDBG program.

(b) HUD may waive any requirement of this subpart not required by law whenever it is determined that undue hardship will result from applying the requirement and where application of the requirement would adversely affect the purposes of the Act.

§ 570.481 Definitions.

As used in this subpart, the following terms shall have the meanings indicated:

Act means title I of the Housing and Community Development Act of 1974 as amended (42 U.S.C. 5301 *et seq.*).

Buildings for the general conduct of government means city halls, county administrative buildings, State capitol or office buildings or other facilities in which the legislative, judicial or general administrative affairs of the government are conducted. Such term does not include such facilities such as neighborhood service centers or special purpose buildings located in low and moderate income areas that house various nonlegislative functions or services provided by government at decentralized locations.

CDBG funds means Community Development Block Grant funds, in the form of grants under this subpart and program income.

Family means all persons living in the same household who are related by birth, marriage or adoption.

Household means all the persons who occupy a housing unit. The occupants may be a single family, one person living alone, two or more families living together, or any group of related or unrelated persons who share living arrangements.

Income means income as reasonably defined by the State. The method used for determining income under the section 8 Housing Assistance Payments program need not be used for this purpose.

HUD means the Department of Housing and Urban Development.

Low and moderate income family or *lower income family* means a family having an income equal to or less than the section 8 lower income limits as established by HUD.

Low and moderate income person or *lower income person* means a member of a family having an income equal to or less than the section 8 lower income limit as established by HUD. Unrelated individuals shall be considered as one person families for this purpose.

Low income family means a family having an income equal to or less than the section 8 very low income limit established by HUD.

Low income person means a member of a family having an income equal to or less than the section 8 very low income limit established by HUD. Unrelated individuals shall be considered as one person families for this purpose.

Moderate income family means a family having an income equal to or less than the section 8 lower income limit and greater than the section 8 very low income limit, established by HUD.

Moderate income person means a member of a family having an income equal to or less than the section 8 lower income limit and greater than the section 8 very low income limit, established by HUD. Unrelated individuals shall be considered as one person families for this purpose.

Program income means gross income received by a State, a unit of general local government or a subrecipient of a unit of general local government that was generated from the use of CDBG funds. When such income is generated by an activity that is only partially assisted with CDBG funds, the income shall be prorated to reflect the percentage of CDBG funds used (e.g., a single loan supported by CDBG funds and other funds; a single parcel of land purchased with CDBG funds and other funds). Program income includes, but is not limited to, the following:

(1) Proceeds from the disposition by sale or long term lease of real property purchased or improved with CDBG funds;

(2) Proceeds from the disposition of equipment purchased with CBG funds.

(3) Gross income from the use or rental of real or personal property acquired by the unit of general local government or a subrecipient of a unit of general local government with CDBG funds, less the costs incidental to the generation of the income;

(4) Gross income from the use or rental of real property owned by the unit of general local government or a subrecipient of a unit of general local government that was constructed or improved with CDBG funds, less the costs incidental to the generation of the income;

(5) Payments of principal and interest on loans made using CDBG funds;

(6) Proceeds from the sale of loans made with CDBG funds;

(7) Proceeds from the sale of obligations secured by loans made with CDBG funds;

(8) Interest earned on funds held in a revolving fund account;

(9) Interest earned on program income pending disposition of such income; and

(10) Funds collected through special assessments made against properties owned and occupied by households *not* of low and moderate income, where such assessments are used to recover all or part of the CDBG portion of a public improvement.

(11) Gross income derived from the ownership interest in a for-profit entity acquired or purchased with CDBG funds.

Secretary means the Secretary of Housing and Urban Development.

Special assessment means the recovery of the capital costs of a public improvement such as streets, water or sewer facilities, curbs or gutters, through a fee or charge levied or filed as a lien against a parcel of real estate as a direct result of benefit derived from the installation of such public improvement, or a one-time charge made as a condition of access to a public improvement. The term does not relate to taxes, or the establishment of the value of real estate for the purpose of levying real estate, property or ad valorem taxes, and does not include periodic charges based on the use of public improvements such as water and

sewer user charges, even if such charges include the recovery of all or some portion of the capital costs of the public improvement.

State means any State of the United States, or an instrumentality thereof approved by the Governor; and the Commonwealth of Puerto Rico.

Unit of general local government means any city, county, town, township, parish, village or other general purpose political subdivision of a State; or a combination of such political subdivisions recognized by the Secretary. Such term also includes a State or a local public body or agency (as defined in section 711 of the Housing and Urban Development Act of 1970), a community association, or other entity, which is approved by the Secretary for the purpose of providing public facilities or services to a new community as part of a program meeting the eligibility standards of section 712 of the Housing and Urban Development Act of 1970 or title IV of the Housing and Urban Development Act of 1968.

§ 570.482 Primary and national objective; State responsibilities.

(a) *Primary and national objective.* The primary objective of the Act is the development of viable urban communities, by providing decent housing and a suitable living environment, and expanding economic opportunities, principally for persons of low and moderate income. This primary objective is achieved through a CDBG program where the funds are used for activities which will carry out one of three national objectives: benefit to low and moderate income families, prevention or elimination of slums or blight, and alleviation of community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs. Each activity assisted in whole or in part with CDBG funds, must address at least one of the three national objectives (See § 570.484) and not less than 70 percent of the total CDBG funds received by the State during a period specified by the State of not more than three years must be used for activities that benefit persons of low and moderate income.

(b) *State responsibilities.* The State has primary and direct responsibility for overall administration of CDBG funds distributed under this subpart.

(1) Subject to the requirements of the Act and this subpart, the State may develop purposes and procedures for distributing CDBG funds as State and local priorities dictate. The State shall distribute CDBG funds to units of general local government in the form of grants in a timely manner and in accordance with the State's method of distribution described in its final Statement.

(2) The State is responsible for establishing and implementing policies and procedures for administration of grants to units of general local government to ensure CDBG funds are provided and expended in accordance with the Act, other applicable laws and this subpart. In carrying out this responsibility, the State shall, among other things, make reviews and audits of units of general local government as required under § 570.493.

(3) Subject to the specific requirements of the Act and this subpart, in reviewing a State's performance, HUD will give maximum feasible deference to the State's choice of purposes, procedures and activities for fulfilling the objectives of the Act.

§ 570.483 Eligible activities.

(a) *General.* This section sets forth the only activities that units of general local government may assist with CDBG funds.

(1) *Nonexclusion of eligible activities.* A State may not refuse to distribute CDBG funds for any eligible activity. This prohibition does not preclude the use of set-asides or selection criteria that have the effect of increasing the likelihood of certain activities being funded while decreasing the likelihood of others, provided that no eligible activities are categorically excluded.

(2) *Special policies governing facilities.* The following special policies apply to:

(i) *Facilities containing both eligible and ineligible uses.* A public facility otherwise eligible for assistance under the CDBG program may be assisted with CDBG funds even if it is part of a multiple use building containing ineligible uses, if:

(A) The facility which is otherwise eligible and proposed for assistance will occupy a designated and discrete area within the larger facility; and

(B) The unit of general local government can determine the costs attributable to the facility proposed for assistance as separate and distinct from the overall costs of the multiple-use building and/or facility.

Allowable costs are limited to those attributable to the eligible portion of the building or facility.

(ii) *Fees for use of facilities.* Reasonable fees may be charged for the use of the facilities assisted with CDBG funds, but charges, such as excessive membership fees, which will have the effect of precluding low and moderate income persons from using the facilities, are not permitted.

(3) *Special assessments under the CDBG program.* The following policies relate to special assessments under the CDBG program:

(i) *Public improvements initially assisted with CDBG funds.* Where CDBG funds are used to pay all or part of the cost of a public improvement, special assessments may be imposed as follows:

(A) Special assessments to recover the *CDBG funds* may be made only against properties owned and occupied by persons *not* of low and moderate income. Such assessments constitute program income.

(B) Special assessments to recover the *non-CDBG* portion may be made provided that CDBG funds are used to pay the special assessment in behalf of all properties owned and occupied by low and moderate income persons; except that CDBG funds need not be used to pay the special assessments in behalf of properties owned and occupied by moderate income persons if, when permitted by the State, the unit of general local government certifies that it does not have sufficient CDBG funds to pay the assessments in behalf of all of the low and moderate income owner-occupant persons. Funds collected through such special assessments are not program income.

(ii) *Public improvements not initially assisted with CDBG funds.* CDBG funds may be used to pay special assessments levied against property when such assessments are used to recover the capital cost of eligible public improvements initially financed solely from sources other than CDBG funds. The payment of special assessments with CDBG funds constitutes CDBG assistance to the public improvement. Therefore, CDBG funds may be used to pay special assessments provided:

(A) The installation of the public improvements was carried out in compliance with requirements applicable to activities assisted under this subpart including labor, environmental and citizen participation requirements;

(B) The installation of the public improvement meets a criterion for national objectives, § 570.484(b)(2), (c), or (d).

(C) The requirements of § 570.483(a)(3)(i)(B) are met.

(4) *Local government determinations required as a condition of eligibility.* In several instances under this subpart, the eligibility of an activity depends on a

special local determination. Units of general local government shall maintain documentation of all such determinations. A written determination is required for any activity carried out under the authority of § 570.483(b)(6), § 570.483(c)(2)(iii), § 570.483(e), § 570.483(f), and § 570.483(h)(5). A written determination is also required for certain relocation costs under § 570.483(b)(9).

(5) *Means of carrying out eligible activities.* (i) Activities eligible under this subpart, other than those authorized under § 570.483(f), may be undertaken, subject to local law:

(A) By the unit of general local government through:

(*1*) Its employees, or

(*2*) Procurement contracts governed by the requirements of § 570.490; or

(B) Through agreements between the unit of general local government and subrecipients defined as a public or private nonprofit organization, or an entity described in § 570.483(f); or

(C) By one or more public agencies, including existing local public agencies, that are designated by the chief executive officer of the unit of general local government.

(ii) Activities eligible under § 570.483(f) may only be undertaken by subrecipients specified in that section.

(6) *Constitutional prohibition.* In accordance with First Amendment Church/State Principles, as a general rule, CDBG assistance may not be used for religious activities or be provided to primarily religious entities for any activities, including secular activities. The following restrictions and limitations therefore apply to the use of CDBG funds.

(i) CDBG funds may not be used for the acquisition of property or the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures to be used for religious purposes or which will otherwise promote religious interests. This limitation includes the acquisition of property or ownership by primarily religious entities and the construction or rehabilitation (including historic preservation and removal of architectural barriers) of structures owned by such entities (except as permitted under paragraph (a)(6)(ii) of this section with respect to rehabilitation and under paragraph (a)(6)(iv) of this section with the respect to repairs undertaken in connection with public services) regardless of the use to be made of the property or structure. Property owned by primarily religious entities may be acquired with CDBG funds at no more than fair market value for a nonreligious use.

(ii) CDBG funds may be used to rehabilitate buildings owned by primarily religious entities to be used for a wholly secular purpose under the following conditions:

(A) The building (or portion thereof) that is to be improved with the CDBG assistance has been leased to an existing or newly established wholly secular entity (which may be an entity established by the religious entity);

(B) The CDBG assistance is provided to the lessee (and not the lessor) to make the improvements;

(C) The leased premises will be used exclusively for secular purposes available to persons regardless of religion;

(D) The lease payments do not exceed the fair market rent of the premises as they were before the improvements are made;

(E) The portion of the cost of any improvements that also serve a non-leased part of the building will be allocated to and paid for by the lessor.

(F) The lessor enters into a binding agreement that unless the lessee, or a qualified successor lessee, retains the use of the leased premises for a wholly secular purpose for at least the useful life of the improvements, the lessor will pay to the lessee an amount equal to the residual value of the improvements;

(G) The lessee must remit the amount received from the lessor under paragraph (a)(6)(ii)(F) of this section to the unit of general local government or subrecipient from which the CDBG funds were derived. The lessee can also enter into a management contract authorizing the lessor religious entity to use the building for its intended secular purpose, e.g., homeless shelter, provision of public services. In such case, the religious entity must agree in the management contract to carry out the secular purpose in a manner free from religious influences in accordance with the principles set forth in paragraph (a)(6)(iii) of this section.

(iii) As a general rule, CDBG funds may be used for eligible public services to be provided through a primarily religious entity, where the religious entity enters into an agreement with the unit of general local government or subrecipient from which the CDBG funds are derived that in connection with the provision of such services:

(A) It will not discriminate against any employee or applicant for employment on the basis of religion and will not limit employment or give preference in employment to persons on the basis of religion;

(B) It will not discriminate against any persons applying for such public services on the basis of religion and will not limit such services or give preference to persons on the basis of religion.

(C) It will provide no religious instruction or counseling, conduct no religious worship or services, engage in no religious proselytizing, and exert no other religious influence in the provision of such public services;

(iv) Where the public services provided under paragraph (a)(6)(iii) of this section are carried out on property owned by the primarily religious entity, CDBG funds may also be used for minor repairs to such property which are directly related to carrying out the public services where the cost constitutes in dollar terms only an incidental portion of the CDBG expenditure for the public services.

(b) *Basic eligible activities.* CDBG funds may be used for the following activities:

(1) *Acquisition.* Acquisition in whole or in part by the unit of general local government, or other public or private nonprofit entity, by purchase, long-term lease, donation, or otherwise, of real property (including air rights, water rights, rights-of-way, easements, and other interests therein) for any public purpose, subject to the limitations of § 570.483(i).

(2) *Disposition.* Disposition, through sale, lease, donation, or otherwise, of any real property acquired with CDBG funds or its retention for public purposes, including reasonable costs of temporarily managing such property or property acquired under urban renewal, provided that the proceeds from any such disposition shall be program income subject to the requirements set forth in § 570.490(g).

(3) *Public facilities and improvements.* Acquisition, construction, reconstruction, rehabilitation or installation of public facilities and improvements, except as provided in § 570.483(i) carried out by the unit of general local government or other public or private nonprofit entities. In undertaking such activities, design features and improvements which promote energy efficiency may be included. Such activities may also include the execution of architectural design features, and similar treatments intended to enhance the aesthetic quality of facilities and improvements receiving CDBG assistance, such as decorative pavements, railings, sculptures, pools of water and fountains, and other works of art. Facilities designed for use in providing shelter for persons having special needs are considered public facilities and not subject to the prohibition of new

housing construction described in § 570.483(j)(1)(iii). Such facilities include shelters for the homeless; convalescent homes; hospitals; nursing homes; battered spouse shelters; halfway houses for run-away children, drug offenders or parolees; group homes for mentally retarded persons and temporary housing for disaster victims. In certain cases, nonprofit entities and subrecipients including those specified in § 570.483(f) may acquire title to public facilities. When such facilities are owned by nonprofit entities or subrecipients, they shall be operated so as to be open for use by the general public during all normal hours of operation. Public facilities and improvements eligible for assistance under this paragraph are subject to the policies in § 570.483(a)(2).

(4) *Clearance activities.* Clearance, demolition, and removal of buildings and improvements, including movement of structures to other sites. Demolition of HUD-assisted housing units may be undertaken only with the prior approval of HUD.

(5) *Public services.* Provision of public services (including labor, supplies, and materials) which are directed toward improving the community's public services and facilities, including but not limited to those concerned with employment, crime prevention, child care, health, drug abuse, education, fair housing counseling, energy conservation, welfare, or recreational needs. In order to be eligible for CDBG assistance, public services must meet each of the following criteria:

(i) a public service be either a new service, or a quantifiable increase in the level of a service above that which has been provided by or in behalf of the unit of general local government (through funds raised by such unit, or received by such unit from the State in which it is located) in the twelve calendar months prior to the submission of the grant application to the State. (An exception to this requirement may be made if HUD determines that the decrease in the level of a service was the result of events not within the control of the unit of general local government.)

(ii) The amount of CDBG funds used for public services shall not exceed 15 percent of the grant plus program income distributed under the final statement pertaining to the grant.

(6) *Interim assistance.* (i) The following activities may be undertaken on an interim basis in areas exhibiting objectively determinable signs of physical deterioration where the unit of general local government has determined that immediate action is necessary to arrest the deterioration and that improvements will be carried out as soon as practicable:

(A) The repairing of streets, sidewalks, parks, playgrounds, publicly owned utilities, and public buildings; and

(B) The execution of special garbage, trash, and debris removal, including neighborhood cleanup campaigns, but not the regular curbside collection of garbage or trash in an area.

(ii) In order to alleviate emergency conditions threatening the public health and safety in areas where the chief executive officer of the unit of general local government determines that such an emergency condition exists and requires immediate resolution, CDBG funds may be used for:

(A) The activities specified in paragraph (b)(6)(i) of this section, except for the repair of parks and playgrounds;

(B) The clearance of streets, including snow removal and similar activities; and

(C) The improvement of private properties.

(iii) All activities authorized under paragraph (b)(6)(ii) of this section are limited to the extent necessary to alleviate emergency conditions.

(7) *Payment of non-Federal share.* Payment of the non-Federal share required in connection with a Federal grant-in-aid program undertaken as part of CDBG activities, provided, that such payment shall be limited to activities otherwise eligible and in compliance with applicable requirements under this subpart.

(8) *Urban renewal completion.* Payment of the cost of completing an urban renewal project funded under Title I of the Housing Act of 1949, as amended. Further information regarding the eligibility of such costs is set forth in § 570.801.

(9) *Relocation.* Relocation payments and other assistance for permanently and temporarily relocated individuals, families, businesses, nonprofit organizations, and farm operations where assistance is:

(i) Required under the provisions of § 570.489(a), (b) or (c); or

(ii) Determined by the unit of general local government to be appropriate under the provisions of § 570.489(d).

(10) *Loss of rental income.* Payments to housing owners for losses of rental income incurred in holding, for temporary periods, housing units to be used for the relocation of individuals and families displaced by program activities assisted under this subpart.

(11) *Removal of architectural barriers.* Special projects directed to the removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to publicly owned and privately owned buildings, facilities, and improvements.

(12) *Privately owned utilities.* CDBG funds may be used to acquire, construct, reconstruct, rehabilitate, or install the distribution lines and facilities of privately owned utilities, including the placing underground of new or existing distribution facilities and lines.

(13) *Construction of housing.* CDBG funds may be used for the construction of housing assisted under section 17 of the United States Housing Act of 1937.

(c) *Eligible rehabilitation and preservation activities.* (1) *Types of buildings and improvements eligible for rehabilitation assistance.* CDBG funds may be used to finance the rehabilitation of:

(i) Privately owned buildings and improvements for residential purposes.

(ii) Low income public housing and other publicly owned residential buildings and improvements;

(iii) Non residential buildings, except that the rehabilitation of such buildings owned by a private for-profit business is limited to improvements to the exterior of the building and the correction of code violations (further improvements to such buildings may be undertaken pursuant to § 570.483(e).

(iv) Manufactured housing when such housing constitutes part of the community's permanent housing stock.

(2) *Types of assistance.* CDBG funds may be used to finance the following types of rehabilitation activities, and related costs, either singly, or in combination, through the use of grants, loans, loan guarantees, interest supplements, or other means for buildings and improvements described in paragraph (c)(1) of this section.

(i) Assistance to private individuals and entities, including profit making and nonprofit organizations, to acquire for the purpose of rehabilitation, and to rehabilitate properties, for use or resale for residential purposes;

(ii) Labor, materials, and other costs of rehabilitation of properties, including repair directed toward an accumulation of deferred maintenance, replacement of principal fixtures and components of existing structures, installation of security devices, including smoke detectors and dead bolt locks, and renovation through alterations, additions to, or enhancement of existing structures, which may be undertaken singly, or in combination;

(iii) Loans for refinancing existing indebtedness secured by a property being rehabilitated with CDBG funds if such financing is determined by the unit of general local government to be

necessary or appropriate to achieve the locality's community development objectives;

(iv) Improvements to increase the efficient use of energy in structures through such means as installation of storm windows and doors, siding, wall and attic insulation, and conversion, modification, or replacement of heating and cooling equipment, including the use of solar energy equipment.

(v) Improvements to increase the efficient use of water through such means as water saving faucets and shower heads and repair of water leaks;

(vi) Connection of residential structures to water distribution lines or local sewer collection lines;

(vii) For rehabilitation carried out with CDBG funds, costs of:

(A) Initial homeowner warranty premiums;

(B) Hazard insurance premiums, except where assistance is provided in the form of a grant; and

(C) Flood insurance premiums for properties covered by the Flood Disaster Protection Act of 1973.

(D) Procedures concerning inspection and testing for and abatement of lead-based paint, pursuant to § 570.488(f).

(E) Costs of acquiring tools to be lent to owners, tenants, and others who will use such tools to carry out rehabilitation;

(F) Rehabilitation services, such as rehabilitation counseling, energy auditing, preparation of work specifications, loan processing, inspections, and other services related to assisting owners, tenants, contractors, and other entities, participating or seeking to participate in rehabilitation activities authorized under this section, under State programs which provide housing subsidies, under section 312 of the Housing Act of 1964, as amended, under section 810 of the Act, or under section 17 of the United States Housing Act of 1973; and

(G) Assistance for the rehabilitation of housing under section 17 of the United States Housing Act of 1937.

(3) *Code enforcement.* Code enforcement in deteriorating or deteriorated areas where such enforcement together with public improvements, rehabilitation, and services to be provided, may be expected to arrest the decline of the area.

(4) *Historic preservation.* CDBG funds may be used for the rehabilitation, preservation or restoration of historic properties, whether publicly or privately owned. Historic properties are those sites or structures that are either listed in or eligible to be listed in the National Register of Historic places, listed in a State or local inventory of historic places, or designated as a State or local landmark or historic district by appropriate law or ordinance. Historic preservation, however, is not authorized for buildings for the general conduct of government.

(5) *Renovation of closed buildings.* CDBG funds may be used to renovate closed buildings, such as closed school buildings, for use as an eligible public facility or to rehabilitate such buildings for housing.

(d) *Substantial reconstruction of housing.* CDBG funds may be used by a unit of general local government to reconstruct residential structures (i.e., rebuild the structure on the same site) having a low and moderate income owner occupant and consisting of one to four dwelling units if either:

(1) The need for the reconstruction was not determinable until after rehabilitation on the structure had already commenced; or

(2) The housing that is being reconstructed is part of a neighborhood (as defined in paragraph (f)(2)(i) of this section) rehabilitation effort in which the unit of general local government is carrying out or proposes to carry out housing rehabilitation activities, and the housing to be reconstructed would otherwise be a part of the housing rehabilitation in that neighborhood; and the unit of general local government determines:

(i) That the housing to be reconstructed is not suitable for rehabilitation based on a definition of unsuitable for rehabilitation that the State has established for this purpose; and

(ii) The estimated cost of reconstruction is at least 20 percent less than the estimated cost of purchasing comparable newly constructed housing (including land) located in that neighborhood or in a comparable neighborhood of the unit of general local government (for purposes of this paragraph, comparable newly constructed housing means a newly constructed residential structure of approximately the same size on a lot of approximately the same size), and

(iii) The estimated cost of the reconstruction is less than the fair market value of the reconstructed housing and land based on an appraisal obtained before reconstruction.

(3) The unit of general local government shall document the basis for each of the required determinations of paragraph (d) (1) and (2) of this section.

(e) *Special economic development activities.* A unit of general local government may use CDBG funds for special economic development activities in addition to other activities authorized in this subpart which may be carried out as part of an economic development project. Special activities authorized under this section do not include assistance for the construction of new housing. Special economic development activities include:

(1) The acquisition, construction, reconstruction, rehabilitation or installation of commercial or industrial buildings, structures, and other real property equipment and improvements, including railroad spurs or similar extensions. Such activities may be carried out by the unit of general local government or public or private nonprofit subrecipients.

(2)(i) The provision of assistance to a private for-profit business, including, but not limited to, grants, loans, loan guarantees, interest supplements, technical assistance, and other forms of support, for any activity where the assistance is necessary or appropriate to carry out an economic development project, excluding those described as ineligible in § 570.483(i). In order to ensure that any such assistance does not unduly enrich the for-profit business, an analysis shall be conducted to determine that the amount of any financial assistance to be provided is not excessive, taking into account the actual needs of the business in making the project financially feasible and the extent of public benefit expected to be derived from the economic development project. The unit of general local government shall document the analysis as well as any factors it considered in making its determination that the assistance is necessary or appropriate to carry out the project. The requirement for making such a determination applies whether the business is to receive assistance from the unit of general local government or through a subrecipient.

(ii) The provision of assistance to a private for-profit business where necessary or appropriate to carry out an economic development project may also include assistance for job training costs where, because of a lack of skilled persons in the labor market to fill newly created jobs resulting from the establishment or expansion of the private for-profit business, the training of employees newly hired for such positions is necessary. Financial assistance provided solely for such job training costs may be based on a determination that the amount of the assistance is limited to the added costs expected to be incurred by the business as a result of employing unskilled persons and such costs are reasonable

in comparison to the benefits received by the persons trained.

(f) *Special activities by certain sub-recipients.* The unit of general local government may provide CDBG funds (e.g., grant or loan) to any of the three types of subrecipients specified below to carry out a neighborhood revitalization, community economic development, or energy conservation project. Such a project may include activities listed as eligible under this section and activities not otherwise eligible except those described as ineligible in § 570.483(i), when the unit of general local government determines that such activities are necessary to achieve its community development objectives. Public service activities carried out by such entities are not subject to the 15 percent of each grant limitation of paragraph (b)(5) of this section for public services activities. The CDBG-funded administrative and planning activities carried out by these subrecipients are subject to the limitations set out in § 570.490(a). Assistance to a for-profit business by such subrecipients is subject to the requirements under § 570.483(e).

(1) *Unit of general local government responsibilities.* Units of general local government are responsible for ensuring that CDBG funds are used by the subrecipients in a manner consistent with the requirements of this part and other applicable Federal, State, or local law. Units of general local government are also responsible for carrying out the environmental review and clearance responsibilities.

(2) *Eligible subrecipients.* The following are subrecipients authorized to receive assistance under this section.

(i) *Neighborhood-based nonprofit organization.* A neighborhood-based nonprofit organization is an association or corporation, duly organized to promote and undertake community development activities on a not-for-profit basis within a neighborhood. An organization is considered to be neighborhood-based if the majority of either its membership, clientele, or governing body are residents of the neighborhood where activities assisted with CDBG funds are to be carried out. A neighborhood is defined as:

(A) A geographic location within the jurisdiction of a unit of general local government (but not the entire jurisdiction) which is designated in comprehensive plans, ordinances, or other local documents as a neighborhood, village, or similar geographical designation; or traditionally recognized as a neighborhood; or

(B) The entire jurisdiction of a unit of general local government which is under 25,000 population; or

(C) A neighborhood, village or similar geographical designation in a New Community as defined in § 570.403(a)(1).

(ii) *Section 301(d) Small Business Investment Companies.* A Section 301(d) Small Business Investment Company is an entity organized pursuant to section 301(d) of the Small Business Investment Act of 1958 (15 U.S.C. 681(d)), including those which are profit making.

(iii) *Local development corporations.* A local development corporation is:

(A) An entity organized pursuant to Title VII of the Headstart, Economic Opportunity, and Community Partnership Act of 1974 (42 U.S.C. 2981) or the Community Economic Development Act of 1981 (42 U.S.C. 9801 *et seq.*);

(B) An entity eligible for assistance under section 502 or 503 of the Small Business Investment Act of 1958 (15 U.S.C. 696);

(C) Other entities incorporated under State or local law whose membership is representative of the area of operation of the entity (including nonresident owners of businesses in the area) and which are similar in purpose, function, and scope to those specified in paragraphs (f)(3)(i) or (f)(3)(ii) of this section; or

(D) A State development entity eligible for assistance under section 501 of the Small Business Investment Act of 1958 (15 U.S.C. 695).

(g) *Eligible planning, urban environmental design and policy-planning-management-capacity building activities.* (1) Planning activities which consist of all costs of data gathering, studies, analysis, and preparation of plans and the identification of actions that will implement such plans, including, but not limited to:

(i) Comprehensive plans;

(ii) Community development plans;

(iii) Functional plans, in areas such as:

(A) Housing;

(B) Land use;

(C) Economic development;

(D) Open space recreation;

(E) Energy use and conservation;

(F) Floodplain and wetlands management in accordance with the requirements of Executive Orders 11988 and 11990;

(G) Transportation;

(H) Utilities; and

(I) Historic preservation.

(iv) Other plans and studies such as:

(A) Small area and neighborhood plans;

(B) Capital improvements programs;

(C) Individual project plans (but excluding engineering and design costs related to a specific activity which are eligible as part of the cost of such activity under § 570.483(b)-(f).

(D) The reasonable costs of general environmental and historic preservation studies. However, costs necessary to comply with 24 CFR part 58, including project specific environmental assessments and clearances for activities eligible for assistance under this part, are eligible as part of the cost of such activities under § 570.483(b)-(f). Costs for such specific assessments and clearances may also be incurred under this paragraph but would then be considered planning costs for the purposes of § 570.490(a);

(E) Strategies and action programs to implement plans, including the development of codes, ordinances and regulations;

(F) Support of clearinghouse functions, such as those specified in Executive Order 12372; and

(G) Analysis of impediments to fair housing choice.

(2) Policy—planning—management—capacity building activities which will enable the unit of general local government to:

(i) Determine its needs;

(ii) Set long-term goals and short-term objectives, including those related to environmental design;

(iii) Devise programs and activities to meet these goals and objectives;

(iv) Evaluate the progress of such programs and activities in accomplishing these goals and objectives; and

(v) Carry out management, coordination and monitoring of activities necessary for effective planning implementation, but excluding the costs necessary to implement such plans.

(h) *Program administration costs.* Payment of reasonable administrative costs and carrying charges related to the planning and execution of community development activities assisted in whole or in part with funds provided under this part and housing programs which provide housing subsidies. This does not include staff and overhead costs directly related to carrying out activities eligible under § 570.483(b) through § 570.483(f), since those costs are eligible as part of such activities.

(1) *General management, oversight and coordination.* Reasonable costs of overall program management, coordination, monitoring, and evaluation. Such costs include, but are not necessarily limited to, necessary expenditures for the following:

(i) Salaries, wages, and related costs of the unit of general local government's staff, the staff of local public agencies,

or other staff engaged in program administration. In charging costs to this category the unit of general local government may either include the entire salary, wages, and related costs allocable to the program of each person whose primary responsibilities with regard to the program involve program administration assignments, or the prorate share of the salary, wages, and related costs of each person whose job includes any program administration assignments. Program administration includes the following types of assignments.

(A) Providing local officials and citizens with information about the program;

(B) Preparing program budgets and schedules, and amendments thereto;

(C) Developing systems for assuring compliance with program requirements;

(D) Developing interagency agreements and agreements with subrecipients and contractors to carry out program activities;

(E) Monitoring program activities for progress and compliance with program requirements;

(F) Preparing reports and other documents related to the program for submission to the State or HUD;

(G) Coordinating the resolution of audit and monitoring findings;

(H) Evaluating program results against Stated objectives; and

(I) Managing or supervising persons whose primary responsibilities with regard to the program include such assignments as those described in paragraph (h)(1)(i) (A) through (H) of this section.

(ii) Travel costs incurred for official business in carrying out the program;

(iii) Administrative services performed under third party contracts or agreements, including such services as general legal services, accounting services, and audit services (including payments to a State audit entity); and

(iv) Other costs for goods and services required for administration of the program, including such goods and services as rental or purchase of equipment, insurance, utilities, office supplies, and rental and maintenance (but not purchase) of office space.

(v) Activity delivery costs, as part of the cost of carrying out the activity, at the discretion of the State.

(3) *Fair housing activities.* Provision of fair housing services designed to further the fair housing objectives of the Fair Housing Act (42 U.S.C. 3601–20) by making all persons without regard to race, color, religion, sex and national origin familial status or handicap, aware of the range of housing opportunities available to them; other fair housing enforcement, education, and outreach activities; and other activities designed to further the housing objective of avoiding undue concentrations of assisted persons in areas containing a high proportion of lower-income persons.

(4) *Indirect costs.* Costs may be charged to the CDBG program under a cost allocation plan prepared in accordance with § 570.490(f).

(5) *Submission of applications for Federal programs.* Preparation of documents required for submission to the State for the CDBG program. In addition, CDBG funds may be used to prepare applications for other Federal or State programs where the unit of general local government determines that such activities:

(i) Would be eligible under § 570.483,

(ii) Would meet a national objective under § 570.484, and

(iii) Are necessary or appropriate to achieve its community development objectives.

(6) *Administrative expenses to facilitate housing.* CDBG funds may be used for necessary administrative expenses in planning or obtaining financing for housing units provided that the CDBG assistance is limited to facilitating the purchase or occupancy of existing units a majority of which are to be occupied by lower income persons, or the construction of family rental units where at least 20 percent of the units in each project will be occupied at affordable rents by lower income persons. Examples of eligible activities are as follows:

(i) The cost of conducting preliminary surveys and analysis or market needs;

(ii) Site and utility plans, narrative descriptions of the proposed construction, preliminary costs estimates, and design documentation, and "sketch drawings," but excluding architectural, engineering, and other details ordinarily required for construction purposes, such as structural, electrical, plumbing, and mechanical details;

(iii) Reasonable costs associated with development of applications or insured mortgage and insured loan commitments, including commitment fees, and of applications and proposals under the Section 8 Housing Assistance Payments Program pursuant to 24 CFR parts 880–883;

(iv) Fees associated with processing of applications for mortgage or insured loan commitments under programs including those administered by HUD, Farmers Home Administration (FmHA), Federal National Mortgage Association (FNMA), the Government National Mortgage Association (GNMA), and State Housing Finance Agencies;

(v) The cost of issuance and administration of mortgage revenue bonds used to finance the acquisition, rehabilitation or construction of housing, but excluding costs associated with the payment or guarantee of the principal or interest on such bonds; and

(vi) Special outreach activities which result in greater landlord participation in Section 8 Housing Assistance Payments Program—Existing Housing or similar programs for low- and moderate-income persons.

(7) *Section 17 of the United States Housing Act of 1937.* Reasonable costs for overall program development, management, coordination, monitoring, and evaluation, and similar costs associated with management of the Rental Rehabilitation and Housing Development programs authorized under section 17 of the United States Housing Act of 1937, whether or not such activities are otherwise assisted with CDBG funds.

(i) *Ineligible activities.* This paragraph describes ineligible housing and community development activities.

(1) *Buildings for the general conduct of government.* Buildings for the general conduct of government, or portions thereof, cannot be assisted with CDBG funds. This does not exclude, however, the removal of architectural barriers involving any such building.

(2) *General government expenses.* Except as otherwise specifically authorized in this subpart or under OMB Circular A–87, or comparable State standards, expenses required to carry out the regular responsibilities of the unit of general local government are not eligible for assistance with CDBG funds.

(3) *Political activities.* CDBG funds shall not be used to finance the use of facilities or equipment for political purposes or to engage in other partisan political activities, such as candidate forums, voter transportation, or voter registration campaigns. However, a facility originally assisted with CDBG funds may be used on an incidental basis to hold political meetings, candidate forums or voter registration campaign provided that all parties and organizations have access to the facility on an equal basis, and are assessed equal rent or use charges, if any.

(4) *Costs unallowable under State cost principles.* Costs that are unallowable under comparable State principles pursuant to § 570.490(f) are unallowable under this subpart unless the costs are authorized by § 570.483.

(j) *Limited eligibility activities.* (1) The following activities may not be

assisted with CDBG funds unless authorized under provisions of § 570.483(e) or as otherwise specifically noted herein, or when carried out by a subrecipient under the provisions of § 570.483(f).

(i) *Purchase of equipment.* The purchase of equipment with CDBG funds is generally ineligible.

(A) *Construction equipment.* The purchase of construction equipment is ineligible, but compensation for the use of such equipment through leasing, depreciation, or use allowances for an otherwise eligible activity is an eligible use of CDBG funds. However, the purchase of construction equipment or equipment for movement of waste for use as part of a solid waste disposal facility is eligible under § 570.483(b)(3).

(B) *Fire protection equipment.* Fire protection equipment is considered for this purpose to be an integral part of a public facility and thus, purchase of such equipment would be eligible under § 570.483(b)(3).

(C) *Furnishings and personal property.* The purchase of equipment, fixtures, motor vehicles, furnishings, or other personal property not an integral structural fixture is generally ineligible. CDBG funds may be used, however, to purchase or to pay depreciation or use allowances (in accordance with OMB Circulars A–21, A–87 or A–122, as applicable) for such items when necessary for use by a unit of general local government or its subrecipients in the administration of activities assisted with CDBG funds, or when eligible as fire fighting equipment, or when such items constitute all or part of a public service pursuant to § 570.483(b)(5).

(ii) *Operating and maintenance expenses.* The general rule is that any expense associated with repairing, operating or maintaining public facilities, improvements and services is ineligible. Specific exceptions to this general rule are operating and maintenance expenses associated with public service activities, interim assistance, and office space for program staff employed in carrying out the CDBG program. For example, the use of CDBG funds to pay the allocable costs of operating and maintaining a facility used in providing a public service would be eligible under § 570.483(b)(5), even if no other costs of providing such a service are assisted with such funds. Examples of ineligible operating and maintenance expenses are:

(A) Maintenance and repair of streets, parks, playgrounds, water and sewer facilities, solid waste facilities, neighborhood facilities, senior centers, centers for the handicapped, parking and similar public facilities. Examples of maintenance and repair activities for which CDBG funds may not be used include the filling of pot holes in streets, repairing of cracks in sidewalks, the mowing of recreational areas, and the replacement of expended street light bulbs; and

(B) Payment of salaries for staff, utility costs and similar expenses necessary for the operation of public works and facilities.

(iii) *New housing construction.* (A) CDBG funds may be used for the construction of new permanent residential structures or for any program to subsidize or assist such new construction, only:

(*1*) When required to provide last resort housing under the Uniform Relocation Act (§ 570.489);

(*2*) As authorized under section 105(a)(18) of the Act;

(*3*) When carried out by a subrecipient under § 570.483(f);

(B) Activities in support of the development of low- or moderate-income housing including clearance, site assemblage, provision of site improvements and provision of public improvements and certain housing preconstruction costs are not considered as activities to subsidize or assist new residential construction.

(iv) *Income payments.* Payments or stipends for subsistence or housing needs of persons or families, including down payments, rent deposits, mortgage and rent subsidies, utilities and welfare type payments, are ineligible except that housing related or other payments may be eligible as part of a neighborhood revitalization project under paragraph (f) of this section. One-time payments made on behalf of persons or families, to meet emergency needs, such as housing or essential utilities, e.g., to the utility company, landlord, or mortgage company, is not an income payment and is eligible under paragraph (b)(5) of this section.

§ 570.484 Addressing national objectives.

(a) *General.* The following criteria shall be used to determine whether a CDBG assisted activity complies with one or more of the national objectives as required by § 570.482(a):

(b) *Activities benefitting low and moderate income persons.* An activity will be considered to address the objective of benefitting low and moderate income persons if it meets one of the following criteria unless there is substantial evidence to the contrary. In assessing any such evidence, the full range of direct effects of the assisted activity will be considered. The activities, when taken as a whole, must not benefit moderate income persons to the exclusion of low income persons:

(1) *Area Benefit Activities.* (i) An activity, the benefits of which are available to all the residents in a particular area, where at least 51 percent of the residents are low and moderate income persons. Such an area need not be coterminous with census tracts or other officially recognized boundaries but must be the entire area served by the activity. Units of general local government may, at the discretion of the State, use either HUD provided data comparing census data with appropriate low and moderate income levels or other data agreed to by HUD and the State. An activity meeting this requirement need not be located in the service area. An activity that serves an area that is not primarily residential in character shall not qualify under this criterion.

(ii) An activity where the assistance is to a public improvement that provides benefits to all the residents of an area is limited to paying special assessments levied against residential properties owned and occupied by persons of low and moderate income.

(iii) An activity to develop, establish and operate (not to exceed two years after establishment), a uniform emergency telephone number system serving an area having less than 51 percent of low and moderate income residents, when the system has not been made operational before the receipt of CDBG funds, provided a prior written determination is obtained from HUD. HUD's determination will be based upon certifications by the State that:

(A) The system will contribute significantly to the safety of the residents of the area. The unit of general local government must provide the State a list of jurisdictions and unincorporated areas to be served by the system and a list of the emergency services that will participate in the emergency telephone number system;

(B) At least 51 percent of the use of the system will be by low and moderate income persons. The State's certification may be based upon information which identifies the total number of calls actually received over the most recent period of at least six months for which information is available for each of those emergency services which would be covered with the emergency telephone number system. The State may find that at least 51 percent of the use will be by persons of low and moderate income, if it can conclude that at least 51 percent of the total of previous calls for emergency services came from census tracts or enumeration

districts where at least 51 percent of the residents were low and moderate income persons. Alternatively the State's certification may be based upon other data agreed to by HUD and the State which shows that over a period covering at least the past six months the users of all the services to be included in the emergency telephone number system consisted of at least 51 percent low and moderate income persons.

(C) Other Federal funds received by the unit of general local government are insufficient or unavailable for a uniform emergency telephone number system. The unit of general local government must submit a Statement explaining whether the problem is due to the insufficiency of the amount of such funds, the restrictions on the use of such funds, or the prior commitment of such funds for other purposes by the unit of general local government.

(D) The percentage of the total costs of the system paid for by CDBG funds does not exceed the percentage of low and moderate income persons in the service area of the system. The unit of general local government must include a description of the boundaries of the service area of the system, the census tracts or enumeration districts within the boundaries, the total number of persons and the total number of low and moderate income persons in each census tract or enumeration district and the percentage of low and moderate income persons in the service area; and the total cost of the system.

The certifications of the State must be submitted along with a brief statement describing the factual basis upon which the certifications were made.

(2) *Limited Clientele Activities.* (i) An activity which benefits a limited clientele, at least 51 percent of whom are low or moderate income persons. (The following kinds of activities may not qualify under this paragraph: activities, the benefits of which are available to all the residents of an area; activities involving the acquisition, construction or rehabilitation of property for housing; or activities where the benefit to low and moderate income persons to be considered is the creation or retention of jobs.) To qualify under this paragraph, the activity must meet one of the following tests:

(A) Benefit a clientele who are generally presumed to be principally low and moderate income persons. The following groups are presumed by HUD to meet this criterion: abused children, battered spouses, elderly persons, handicapped persons, homeless persons, illiterate persons and migrant farm workers; or

(B) Require information on family size and income so that it is evident that at least 51 percent of the clientele are persons whose family income does not exceed the low and moderate income limit; or

(C) Have income eligibility requirements which limit the activity exclusively to low and moderate income persons; or

(D) Be of such nature and be in such location that it may be concluded that the activity's clientele will primarily be low and moderate income persons.

(ii) A special project directed to removal of material and architectural barriers which restrict the mobility and accessibility of elderly or handicapped persons to publicly owned and privately owned non-residential buildings, facilities and improvements, and the common areas of residential structures containing more than one dwelling unit.

(3) *Housing Activities.* An eligible activity carried out for the purpose of providing or improving permanent residential structures which, upon completion, will be occupied by low and moderate income households. This would include, but not necessarily be limited to, the acquisition or rehabilitation of property, conversion of non-residential structures, and new housing construction. If the structure contains two dwelling units, at least one must be so occupied, and if the structure contains more than two dwelling units, at least 51 percent of the units must be so occupied. Where two or more rental buildings being assisted are or will be located on the same or contiguous properties, and the buildings will be under common ownership and management, the grouped buildings may be considered for this purpose as a single structure. For rental housing, occupancy by low and moderate income households must be at affordable rents to qualify under this criterion. The unit of general local government shall adopt and make public its standards for determining "affordable rents" for this purpose. The following shall also qualify under this criterion:

(i) When less than 51 percent of the units in a structure will be occupied by low and moderate income households, CDBG assistance may be provided in the following limited circumstances:

(A) The assistance is for an eligible activity to reduce the development cost of the new construction of a multifamily, non-elderly rental housing project; and

(B) Not less than 20 percent of the units will be occupied by low and moderate income households at affordable rents; and

(C) The proportion of the total cost of developing the project to be borne by CDBG funds is no greater than the proportion of units in the project that will be occupied by low and moderate income households.

(ii) Where CDBG funds are used to assist rehabilitation eligible under § 570.483(c)(2)(vii) (F) and (G) in direct support of the unit of general local government's Rental Rehabilitation program authorized under 24 CFR part 511, such funds shall be considered to benefit low and moderate income persons where not less than 51 percent of the units assisted, or to be assisted, by the Rental Rehabilitation program overall are for low and moderate income persons.

(4) *Job creation or retention activities.* (i) An activity designed to create or retain permanent jobs where at least 51 percent of the jobs, computed on a full time equivalent basis, involved the employment of low and moderate persons. As a general rule, each assisted business shall be considered to be a separate activity for purposes of determining whether the activity qualifies under this paragraph. However, in certain cases such as where CDBG funds are used to acquire, develop or improve a real property (e.g., a business incubator or an industrial park) the requirement may be met by measuring jobs in the aggregate for all the businesses which locate on the property, provided such businesses are not otherwise assisted by CDBG funds. Additionally, where CDBG funds are used to pay for the staff and overhead costs of § 570.483(f) subrecipient making loans to businesses from non-CDBG funds, this requirement may be met by aggregating the jobs created by all of the businesses receiving loans during any one year period. For an activity that creates jobs, the unit of general local government must document that at least 51 percent of the jobs will be held by, or will be available to low and moderate income persons. For an activity that retains jobs, the unit of general local government must document that the jobs would actually be lost without the CDBG assistance and that either or both of the following conditions apply with respect to at least 51 percent of the jobs at the time the CDBG assistance is provided: The job is known to be held by a low or moderate income person; or the job can reasonably be expected to turn over within the following two years and that steps will be taken to ensure that it will be filled by, or made available to, a low or moderate income person upon turnover. Jobs will be considered to be available to low and moderate income persons for these purposes only if:

(i) Special skills that can only be acquired with substantial training or work experience or education beyond high school are not a prerequisite to fill such jobs, or the business agrees to hire unqualified persons and provide training; and

(ii) The unit of general local government and the assisted business take actions to ensure that low and moderate income persons receive first consideration for filling such jobs.

(5) *Planning-Only Activities.* An activity involving planning (when such activity is the only activity for which the grant to the unit of general local government is given, or if the planning activities unrelated to any other activity assisted by the grant) if it can be documented that at least 51 percent of the persons who would benefit from implementation of the plan are low and moderate income persons. Any such planning activity for an area or a community composed of persons of whom at least 51 percent are low and moderate income shall be considered to meet this national objective.

(c) Activities which aid in the prevention or elimination of slums or blight. Activities meeting one or more of the following criteria, in the absence of substantial evidence to the contrary, will be considered to aid in the prevention or elimination of slums or blight:

(1) Activities to address slums or blight on an area basis. An activity will be considered to address prevention or elimination of slums or blight in an area if:

(i) The area, delineated by the unit of general local government, meets a definition of a slum, blighted, deteriorated or deteriorating area under State or local law;

(ii) Throughout the area there is a substantial number of deteriorated or deteriorating buildings or the public improvements are in a general State of deterioration;

(iii) Documentation is maintained on the boundaries of the area and the condition which qualified the area at the time of its designation; and

(iv) The assisted activity addresses one or more of the conditions which contributed to the deterioration of the area. Rehabilitation of residential buildings carried out in an area meeting the above requirements will be considered to address the area's deterioration only where each such building rehabilitated is considered substandard before rehabilitation, and all deficiencies making a building substandard have been eliminated if less critical work on the building is also undertaken. The State shall ensure that the unit of general local government has developed minimum standards for building quality which may take into account local conditions.

(2) Activities to address slums or blight on a spot basis. Acquisition, clearance, relocation, historic preservation and building rehabilitation activities which eliminate specific conditions of blight or physical decay on a spot basis not located in a slum or blighted area will meet this objective. Under this criterion, rehabilitation is limited to the extent necessary to eliminate specific conditions detrimental to public health and safety.

(3) Activities to address slums or blight in an urban renewal area. An activity will be considered to address prevention or elimination of slums or blight in an urban renewal area if the activity is:

(i) Located within an urban renewal project area or Neighborhood Development Program (NDP) action area i.e., an area in which funded activities were authorized under an urban renewal Loan and Grant Agreement or an annual NDP Funding Agreement, pursuant to Title I of the Housing Act of 1949; and

(ii) Necessary to complete the urban renewal plan, as then in effect, including initial land redevelopment permitted by the plan.

(4) Planning Only Activities. An activity involving planning (when such activity is the only activity for which the grant to the unit of general local government is given, or the planning activity is unrelated to any other activity assisted by the grant) if the plans are for a slum or blighted area, or if all elements of the planning are necessary for and related to an activity which, if funded, would meet one of the other criteria of elimination of slums or blight.

(d) Activities designed to meet community development needs having a particular urgency. In the absence of substantial evidence to the contrary, an activity will be considered to address this objective if the unit of general local government certifies and the State determines that the activity is designed to alleviate existing conditions which pose a serious and immediate threat to the health or welfare of the community which are of recent origin or which recently became urgent, that the unit of general local government is unable to finance the activity on its own, and that other sources of funding are not available. A condition will generally be considered to be of recent origin if it developed or became urgent within 18 months preceding the certification by the unit of general local government.

(e) Additional Criteria. (1) In any case where the activity undertaken for the purpose of creating or retaining jobs is a public improvement and the area served is primarily residential, the activity must meet the requirements of paragraph (b)(1) of this section as well as those of paragraph (b)(4) of this section in order to qualify as benefitting low and moderate income persons.

(2) Where the assisted activity is acquisition of real property, a preliminary determination of whether the activity addresses a national objective may be based on the planned use of the property after acquisition. A final determination shall be based on the actual use of the property, excluding any short-term, temporary use. Where the acquisition is for the purpose of clearance which will eliminate specific conditions of blight or physical decay, the clearance activity shall be considered the actual use of the property. However, any subsequent use or disposition of the cleared property shall be treated as a "change of use" under § 571.490(1).

(3) Where the assisted activity is relocation assistance that the unit of general local government is required to provide, such relocation assistance shall be considered to address the same national objective as is addressed by the displacing activity. Where the relocation assistance is voluntary, the unit of general local government may qualify the assistance either on the basis of the national objective addressed by the displacing activity or if the relocation assistance is to low and moderate income persons, on the basis of the national objective of benefitting low and moderate income persons.

(f) *Planning and administrative costs.* CDBG funds expended for eligible planning and administrative costs by units of general local government in conjunction with other CDBG assisted activities will be considered to address the national objectives.

§ 570.485 Overall benefit to low and moderate income persons.

(a) *General.* The State must certify that in the aggregate, not less than 70 percent of the CDBG funds received by the State during a period specified by the State, not to exceed three years, will be used for activities that benefit persons of low and moderate income. The period selected and certified to by the State shall be designated by fiscal year of annual grants and shall be for one, two or three consecutive annual grant. The period shall be in effect until all included funds are expended. No annual grant may be included in more

than one period selected, and each grant received must be included in a selected period.

(b) *Computation of 70 percent benefit.* Determination that a State has carried out its certification under paragraph (a) of this section requires evidence that not less than 70 percent of the aggregate of the designated annual grant(s), any funds reallocated by HUD to the State, and any distributed program income covered in the method of distribution in the final Statement(s) for the designated annual grant(s) have been expended for activities meeting criteria as provided in § 570.484(b) for activities benefiting low and moderate income persons. In calculating the percentage of funds expended for such activities:

(1) All CDBG funds included in the period selected and certified to by the State shall be accounted for, except for funds used by the State, or by the units of general local government, for program administration, or for planning activities other than those which must meet a national objective under § 570.484 (b)(5) or (c)(4).

(2) Except as provided in paragraph (b)(3) of this section, CDBG funds expended for an eligible activity meeting the criteria for activities benefiting low and moderate income persons shall count in their entirety towards meeting the 70 percent benefit to persons of low and moderate income requirement.

(3) Funds expended for the acquisition, new construction or rehabilitation of property for housing that qualifies under § 570.484(b)(3) shall be counted for this purpose but shall be limited to an amount determined by multiplying the total cost (including CDBG and non-CDBG costs) of the acquisition, construction or rehabilitation by the percent of units in such housing to be occupied by low and moderate income persons, except that the amount counted shall not exceed the amount of CDBG funds provided.

§ 570.486 State submissions and State citizen participation requirements.

(a) *Final Statement and certifications.* On or before March 31st of each Federal fiscal year, the State shall submit the following to HUD (except that the HUD Field Office may extend this deadline by 60 days based on good cause provided by the State) :

(1) *Final Statement.* A final statement that consists of the following components:

(i) The State's community development objectives, and

(ii) The method by which the State will distribute CDBG funds to units of general local government.

(A) The method of distribution shall cover the following funds:

(*1*) The annual grant;

(*2*) Any funds recaptured by the State from units of general local government that will be distributed to other units of general local government from previous annual grants if such redistribution is to be governed by this method of distribution rather than that originally described in the final Statement covering such funds;

(*3*) Any funds that are reallocated to the State by HUD at the time the annual grant is awarded; and

(*4*) Any program income that is distributed by the State during the period beginning with the date upon which HUD awards the annual grant to the State and ending with the following year's grant award date.

(B) The method of distribution must provide sufficient information so that units of general local government will know the State's criteria for selecting applications for funding and will be able to comment on the proposed method of distribution and to prepare responsive applications. Comparative, first in, formula or other distribution methods may be used. Incorporation by reference of other documents describing the method of distribution is not sufficient.

(C) The method of distribution shall contain:

(*1*) A description of all criteria used to select applications for funding, including the relative importance of the criteria.

(*2*) A description of how CDBG funds will be allocated among all funding categories;

(*3*) Standards for past performance, grant size limits and other threshold factors that would limit a unit of general local government's ability to apply or be selected, or limit the amounts for which the unit of general local government may apply.

(D) *Documentation.* The State must document that it followed its method of distribution for each unit of general local government that applies.

(2) *Certifications by the Governor or other authorized State official.* The governor or other authorized State official shall certify to HUD that the State:

(i) Has met the citizen participation requirements in paragraph (c) of this section;

(ii) Will conduct and administer the grant in conformity with Title VI of the Civil Rights Act of 1964 (42 USC 2000d *et seq*) and the Fair Housing Act (42 USC 3601–19) and will affirmatively further fair housing;

(iii) Has developed the method of distribution so as to give maximum feasible priority to activities which will benefit low and moderate income families or aid in the prevention or elimination of slums or blight, and the method of distribution may also include activities which the State certifies are designed to meet other community development needs having a particular urgency because existing conditions pose a serious and immediate threat to the health or welfare of the community where other financial resources are not available to meet such needs, except that the aggregate use of CDBG funds received during a period specified by the State of not more than 3 years, shall principally benefit persons of low and moderate income in a manner that ensures that not less than 70 percent of such funds are used for activities that benefit such persons during such period;

(iv) Has developed a community development plan, for the period specified by the State in paragraph (a)(2)(iv)(iii) of this section that identifies community development and housing needs and specifies both short- and long-term community development objectives that have been developed in accordance with the primary objective and requirements of the Act;

(v) Will not attempt to recover any capital costs of public improvements assisted in whole or part with CDBG funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless

(A) CDBG funds received are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this subpart; or

(B) For the purposes of accessing any amount against properties owned and occupied by persons of moderate income, the State certifies to HUD that it lacks sufficient CDBG funds to comply with the requirements of paragraph (a)(2)(v)(A) of this section; and

(vi) Will comply with the Act and with other applicable laws.

(vii) With respect to units of general local government in nonentitled areas, it:

(A) Engages or will engage in planning for community development activities;

(B) Provides or will provide technical assistance in connection with community development programs;

(C) Will not refuse to distribute CDBG funds to any unit of general local government on the basis of the particular eligible activity selected by such unit of general local government to meet its community development needs,

except that this requirement may not be considered to prevent the State from establishing priorities in distributing CDBG funds on the basis of the activities selected; and

(D) Has consulted with local elected officials from among units of general local government in determining the method of distribution of funds.

(viii) Will require each unit of general local government to certify that it will comply with the requirements of § 570.489.

(ix) Will require each of its recipient units of general local government to identify its community development and housing needs, including the needs of low and moderate income persons, and the activities to be undertaken to meet such needs.

(x) The State shall also make the certifications in appendix C to 24 CFR part 24, regarding the Drug-Free Workplace Act and in appendix A to 24 CFR part 87 regarding lobbying.

(b) *Acceptance of certifications.* In the absence of independent evidence (which may, but need not be, derived from performance reviews and audits performed by HUD under § 570.494) which tends to challenge in a substantial manner the certifications made by the State, the certifications will be satisfactory to HUD if made in compliance with the requirements of this section. If such independent evidence is available to HUD, however, HUD may require such further information or assurances to be submitted by the State as HUD may consider warranted or necessary in order to find the State's certifications satisfactory.

(c) *Citizen participation requirements of a State.* To receive its grant, the State must:

(1) Have a written plan that describes the citizen participation requirements (specified in § 570.487(c)) for units of general local government and explains how the requirements must be met.

(2) Consult with local elected officials from among units of general local government in determining the State's Method of Distribution in its final Statement.

(3) Furnish citizens and units of general local government information concerning the amount of CDBG funds available for proposed community development and housing activities and the range of activities that may be undertaken, including the estimated amount proposed to be used for activities that will benefit persons of low and moderate income and the plans of the State for minimizing displacement of persons as a result of activities assisted with such funds and to assist persons actually displaced as a result of such activities;

(4) Hold one or more public hearings to obtain the views of citizens on community development and housing needs;

(5) Publish a proposed statement in such a manner to afford affected citizens and units of general local government an opportunity to examine its content, and to submit comments on the proposed Statement and on the community development performance of the State, and consider comments received;

(6) Provide citizens, and units of general local government with reasonable and timely access to records regarding the proposed and the past use of CDBG funds; and

(7) Make the final Statement available to the public at the time it is submitted to HUD.

Participation by citizens and involvement of units of general local government does not restrict the responsibility or authority of the State for the development of its CDBG program and overall administration of CDBG funds received by the State for distribution.

(d) *Failure to make submission.* The State's failure to make the submission required by paragraph (a) of this section within the prescribed deadline constitutes the State's election not to receive and distribute amounts allocated for its nonentitlement areas for the applicable fiscal year. Funds will be reallocated or administered as provided in § 570.498.

(e) *Amendments.* A State shall amend its final Statement if the method of distribution contained in the final Statement submitted to HUD is to be changed. The State shall determine the necessary changes, prepare the proposed amendment, provide citizens and units of general local government with reasonable notice of and an opportunity to comment on the proposed amendment, consider comments received, make the final Statement available to the public at the time it is submitted to HUD, and submit to HUD the amended final Statement before the State may implement changes embodied in the amendment.

§ 570.487 Local government requirements.

(a) *Certifications of units of general local government.* The State may not distribute CDBG funds to any unit of general local government unless the unit of general local government certifies to the State:

(1) It will minimize displacement of persons as a result of activities assisted with CDBG funds;

(2) Its program will be conducted and administered in conformity with Title VI of the Civil Rights Act of 1964 and the Fair Housing Act, and it will affirmatively further fair housing;

(3) It will fulfill the citizen participation requirements of § 570.486(c);

(4) It will not attempt to recover any capital costs of public improvements assisted in whole or part with CDBG funds by assessing any amount against properties owned and occupied by persons of low and moderate income, including any fee charged or assessment made as a condition of obtaining access to such public improvements, unless:

(i) CDBG funds are used to pay the proportion of such fee or assessment that relates to the capital costs of such public improvements that are financed from revenue sources other than under this subpart; or

(ii) For purpose of assessing any amount against properties owned and occupied by persons of moderate income, the unit of local government certified to the State in a manner acceptable to the State, that it lacks sufficient CDBG funds to comply with the requirements of paragraph (a)(4)(i) of this section.

(5) It will comply with the requirements of § 570.489.

(6) It has adopted and is enforcing a policy prohibiting the use of excessive force by law enforcement agencies within its jurisdiction against any individuals engaged in nonviolent civil rights demonstrations and has adopted and is enforcing a policy of enforcing applicable State and local laws against physically barring entrance to or exit from a facility or location which is the subject of such nonviolent civil rights demonstration within its jurisdiction.

(7) The unit of general local government must also make the certifications in appendix B to 24 CFR part 24 regarding debarment and suspension and in appendix A to 24 CFR part 87 regarding lobbying.

(b) *Local needs identification.* To enable the State to satisfy the certification in § 570.486(a)(2), the State must require each unit of general local government to be distributed funds to identify its community development and housing needs, including the needs of low and moderate income persons, and the activities to be undertaken to meet such needs. The unit of local government must make this identification before the submission of an application. The State need not require submission of the identification to the State.

(c) *Citizen participation requirements of a unit of local government.* Each unit of general local government shall meet the following requirements in accord with § 570.486(c)(1).

(1) Provide for and encourage citizen participation, particularly by low and moderate income persons who reside in slum or blighted areas and areas in which CDBG funds are proposed to be used;

(2) Ensure citizens will be given reasonable and timely access to local meetings, information, and records relating to the unit of local government's proposed and actual use of CDBG funds;

(3) Furnish citizens information concerning, but not limited to:

(i) The amount of CDBG funds expected to be made available for the current fiscal year (including the grant and anticipated program income);

(ii) The range of activities that may be undertaken with the CDBG funds;

(iii) The estimated amount of the CDBG funds proposed to be used for activities that will meet the national objective of benefit to low and moderate income persons; and

(iv) The proposed CDBG activities likely to result in displacement and the unit of general local government's anti-displacement and relocation plans required under § 570.489.

(4) Provide technical assistance to groups representative of persons of low and moderate income that request assistance in developing proposals in accordance with the procedures developed by the State. Such assistance need not include providing funds to such groups;

(5) Provide for a minimum of two public hearings, each at a different stage of the program, for the purpose of obtaining citizens' views and responding to proposals and questions. Together the hearings must cover community development and housing needs, development of proposed activities and a review of program performance. The public hearings to cover community development and housing needs must be held before submission of an application to the State. There must be reasonable notice of the hearings and they must be held at times and locations convenient to potential or actual beneficiaries, with accommodations for the handicapped. Public hearings shall be conducted in a manner to meet the needs of non-English speaking residents where a significant number of non-English speaking residents can reasonably be expected to participate;

(6) Provide citizens with reasonable advance notice of, and opportunity to comment on, proposed activities in an application to the State and, for grants already made, activities which are proposed to be added, deleted or substantially changed from the unit of general local government's application to the State. Substantially changed means changes made in terms of purpose, scope, location or beneficiaries as defined by criteria established by the State.

(7) Provide citizens the address, phone number, and times for submitting complaints and grievances and provide timely written answers to written complaints and grievances, within 15 working days where practicable.

(d) *Additional State requirements.* The State may establish additional reasonable application requirements.

(e) *Multijurisdictional grants.* (1) The State may make a grant to a combination of units of general local government if such grants are permitted by State and local law and the combination is recognized by HUD.

(2) HUD recognition of the combination of units of general local government will be based upon a certification by the State that:

(i) Only one grant will be made, with the identified combined units of general local government as the grantee.

(ii) One of the participating units of general local government will apply for the grant (the applicant) and will be authorized to act in a representative capacity for all the participating units of general local government.

(iii) The application will identify the following:

(A) the housing and community development needs of the combination;

(B) The activities that meet those needs;

(C) The amount for each activity; and

(D) The location of each activity.

(iv) Each participating unit of general local government will make and be responsible for compliance with the certifications required under paragraph (a) of this section and with the citizen participation requirements in paragraph (c) of this section.

(v) The applicant will assume overall responsibility for ensuring that the entire program approved in the application will be carried out in accordance with requirements of this subpart. To accomplish this, the applicant must enter into a legally binding cooperation agreement with each participating unit of general local government which incorporates the requirements of this section as well as any other requirement the State may choose to apply.

(3) Program income may be used by any of the participating units of general local government, according to State procedures concerning the use of program income.

(f) *Activities serving beneficiaries outside the jurisdiction of the unit of general government.* At least 51 percent of the beneficiaries of each CDBG activity must be residents of the unit of general local government receiving the grant (whether the activity is located inside or outside of the jurisdiction of the unit of general local government even if the activity is located in the jurisdiction of a CDBG Entitlement grantee).

§ 570.488 Other applicable laws and related program requirements.

(a) *General.* The Act requires HUD to determine whether the State has carried out its certifications in compliance with the requirements of the Act and with other applicable laws. In addition, the Act requires the State to determine whether units of general local governments have carried out their CDBG activities and certifications in accordance with the requirements of the Act and other applicable laws. Certain statutes are expressly made applicable to activities assisted under the Act by the Act itself, while other laws not referred to in the Act may be applicable to such activities by their own terms. Certain statutes or Executive Orders which may be applicable to activities assisted under the Act by their own terms are administered or enforced by governmental officials, departments or agencies other than HUD. This section enumerates laws which HUD will treat as applicable to CDBG funds for purposes of the required determinations. These laws are statutes expressly made applicable by the Act and statutes and Executive Orders for which HUD has enforcement responsibility. The omission of a statute or Executive Order for which HUD does not have direct enforcement responsibility does not mean that, in HUD's opinion, such statute or Executive Order is not applicable to CDBG activities.

(b) *Fair Housing and Equal Opportunity Requirements*—(1) *Title VI of the Civil Rights Act of 1964.* Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d *et seq.*), provides that no person in the United States shall on the ground of race, color, or national origin, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity receiving Federal financial assistance. Regulations implementing the requirements of title VI for HUD programs (24 CFR part 1) are applicable.

(2) *The Fair Housing Act.* The Fair Housing Act (42 U.S.C. 3601–19), States

that it is the policy of the United States to provide, within constitutional limitations, for fair housing throughout the United States and prohibits any person from discriminating in the sale or rental of housing, the financing of housing, or the provision of brokerage services, including otherwise making unavailable or denying a dwelling to any person, because of race, color, religion, sex, national origin, handicap or familial status. HUD's implementing regulations at 24 CFR part 100 are applicable.

(3) *Executive Order 11063.* Executive Order 11063, as amended by Executive Order 12259, directs the Department to take all action necessary and appropriate to prevent discrimination because of race, color, religion (creed), sex, or national origin, in the sale, leasing, rental, or other disposition of residential property and related facilities (including land to be developed for residential use), or in the use of occupancy thereof, if such property and related facilities are, among other things, provided in whole or in part with the aid of loans, advances, grants, or contributions agreed to be made by the Federal Government. HUD regulations implementing executive Order 11063 contained in 24 CFR part 107 are applicable.

(4) *Section 109.* Section 109 of the Act requires that no person in the United States shall on the ground of race, color, national origin, religion or sex, be excluded from participation in, be denied the benefits of, or be subjected to discrimination under any program or activity funded in whole or in part with community development funds made available under the Act.

(i) For purposes of § 570.488(b)(7), the following terms have the meanings indicated:

(A) The term "recipient" means any State, unit of general local government, political subdivision of any State, or instrumentality of any State or political subdivision, any public or private agency, institution, organization, or other entity, or any individual, in any State, to whom Federal financial assistance is extended, directly or through another recipient, for any program or activity, or who otherwise participates in carrying out such program or activity including any successor, assign, or transferee thereof, but such term does not include any ultimate beneficiary under any such program or activity.

(B) The term "program or activity" means any function conducted by an identifiable administrative unit of the State, unit of general local government, subrecipient, or private contractor receiving community development funds or loans from the State or the unit of general local government and "funded in whole or in part with community development funds" means that community development funds in any amount have been transferred by the State, unit of general local government or a subrecipient to an identifiable administrative unit and disbursed in a program or activity.

(ii) In carrying out its responsibility for overall administration of funds, including developing purposes and procedures for distributing funds, planning, public participation, and review of units of general local government, the State may not use criteria or procedures which have the purpose or effect of excluding individuals from, denying them the benefits of, or subjecting them to discrimination under any activities funded in whole or in part with CDBG funds on the ground of race, color, sex, national origin or religion. After a finding of noncompliance or after a State has a firm basis to conclude that discrimination has occurred, the State is not prohibited by this section from taking, or requiring a unit of general local government to take, any action under this subpart to ameliorate an imbalance in services, facilities, or other benefits to any geographic area or specific group of persons within nonentitlment areas of the State where the purpose of such action is to remedy prior discriminatory practice or usage.

(iii) Under any program or activity to which this section applies as described above, a recipient may not, directly or through contractual or other arrangements, on the ground of race, color, national origin, religion or sex:

(A) Deny an individual, any facilities, services, financial aid or other benefits provided under the program or activity.

(B) Provide any facilities, services, financial aid or other benefits to an individual which are different, or are provided in a different form from that provided to others under the program or activity.

(C) Subject any individual to segregated or separate treatment in any facility in, or in any matter of process related to receipt of, any service or benefit under the program or activity.

(D) Restrict in any way any individual's access to, or enjoyment of, any advantage or privilege enjoyed by others in connection with facilities, services, financial aid or other benefits under the program or activity.

(E) Treat any individual differently from others in determining whether such individual satisfies any admission, enrollment, eligibility, membership, or other requirement or condition which such individual must meet in order to be provided any facilities, services or other benefit provided under the program or activity.

(F) Deny to any individual an opportunity to participate in a program or activity as an employee.

(iv) A recipient may not use criteria or methods of administration which have the effect of subjecting persons to discrimination on the basis of race, color, national origin, religion or sex, or have the effect of defeating or substantially impairing accomplishment of the objectives of the program or activity with respect to individuals of a particular race, color, national origin, religion or sex.

(v) In determining the site or location of housing or facilities provided in whole or in part with CDBG funds, a recipient may not make selections of such site or location which have the effect. of excluding persons from, denying them the benefits of, or subjecting them to discrimination on the ground of race, color, national origin, religion or sex; or which have the purpose or effect of defeating or substantially impairing the accomplishment of the objectives of the Act and of this section.

(vi)(A) In administering a program or activity funded in whole or in part with CDBG funds regarding which the recipient has previously discriminated against persons on the ground of race, color, national origin, religion or sex, or if there is sufficient evidence to conclude that such discrimination existed, the recipient must take remedial affirmative action to overcome the effects of prior discrimination. The word "previously" does not exclude current discriminatory practices.

(B) Even in the absence of such prior discrimination, a recipient administering a program or activity funded in whole or in part with CDBG funds may take any nondiscriminatory affirmative action necessary to ensure that the program or activity is open to all without regard to race, color, national origin, religion or sex.

(C) After a finding of noncompliance or after a recipient has a firm basis to conclude that discrimination had occurred, a recipient shall not be prohibited by this subpart from undertaking an eligible activity under § 570.483 to ameliorate an imbalance in services or facilities provided to any geographic area or specific group of persons within its jurisdiction, where the purpose of such action is to remedy prior discriminatory practice or usage.

(vii) Notwithstanding anything to the contrary in this section, nothing contained herein shall be construed to prohibit a recipient from maintaining or constructing separate living facilities or rest room facilities for the different sexes. Furthermore, selectivity on the basis of sex is not prohibited when institutional or custodial services can properly be performed only by a member of the same sex as the recipients of the services.

(viii) Section 109 of the Act further provides that any prohibition against discrimination on the basis of age under the Age Discrimination Act of 1975 (42 U.S.C. 6101 *et seq.*) or with respect to an otherwise qualified handicapped person as provided in section 504 of the Rehabilitation Act of 1973 (29 U.S.C. 794) shall also apply to any program or activity funded in whole or in part with funds made available pursuant to the Act. HUD regulations implementing the Age Discrimination Act are contained in 24 CFR part 146 and the regulations implementing section 504 are contained in 24 CFR part 8 and are applicable.

(c) *Affirmatively Furthering Fair Housing*—(1) *Certification requirements.* The Act requires the State to certify to the satisfaction of HUD that it will affirmatively further fair housing. The Act also requires each unit of general local government to certify that it will affirmatively further fair housing.

(2) *Affirmatively Furthering Fair Housing*—(i) *States.* In reviewing a State's actions to carry out its responsibilities to affirmatively further fair housing in the private and public sectors, absent independent evidence to the contrary, HUD will consider that a State has taken such actions in accordance with its certification if the State has taken the following steps:

(A) Conducted training and actively provided educational material and activities to the participating units of general local government on Federal and State fair housing laws and procedures;

(B) Provided technical assistance to units of general local government on conducting the local analysis of impediments to fair housing choice referred to in paragraph (c)(2)(ii)(A) of this section, including provision of a methodology to conduct such analysis, and in overcoming any impediments to fair housing choice;

(C) Analyzed relevant State-level data on impediments to fair housing choice, as well as the results of local analysis, to determine Statewide nonentitlement area impediments;

(D) Taken action either Statewide or with units of general local government to overcome any impediments;

(E) Worked actively with existing State entities (public or non-profit) whose goal is to further fair housing.

(ii) *Local governments.* In reviewing a unit of general local government's actions to carry out its housing and community development activities in a manner to affirmatively further fair housing in the private and public housing sectors, absent independent evidence to the contrary, a State may consider that a unit of general local government has taken such action in accordance with its certifications if the unit of general local government meets the following review criteria:

(A) The unit of general local government has conducted an analysis of sufficient scope to reflect the size and complexity of the unit of general local government, to determine the impediments to fair housing choice in its housing and community development program and activities. The term "fair housing choice" means the ability of persons, regardless of race, color, religion, sex, handicap, familiar status or national origin, of similar income levels to have available to them the same housing choices. This analysis shall include a review for impediments to fair housing choice in the following areas:

(*1*) The sale or rental of dwellings;

(*2*) The provision of housing brokerage services;

(*3*) The provision of financing assistance for dwellings;

(*4*) Public policies and actions affecting the approval of sites and other building requirements used in the approval process for the construction of publicly assisted housing;

(*5*) The administrative policies concerning community development and housing activities, such as urban homesteading, multifamily rehabilitation, and activities causing displacement, which affect opportunities of minority households to select housing inside or outside areas of minority concentration; and

(*6*) Where there is a determination of unlawful segregation or other housing discrimination by a court or a finding of noncompliance by HUD regarding assisted housing within a unit of general local government's jurisdiction, an analysis of the actions which could be taken by the unit of general local government to help remedy the discriminatory condition, including actions involving the expenditure of CDBG funds.

(B) Based upon the conclusions of the analysis in paragraph (c)(2)(ii)(A) of this section, the unit of general local government has taken lawful steps, consistent with this subpart, to the extent possible within the timeframe of the grant from the State to the unit of general local government to overcome the effects of conditions identified in the analysis that limit fair housing choice within the unit of general local government's jurisdiction. Such actions may include:

(*1*) Enactment and enforcement of an ordinance providing for fair housing consistent with the Fair Housing Act;

(*2*) Support of the administration and enforcement of State fair housing laws providing for fair housing consistent with the Fair Housing Act;

(*3*) Participation in voluntary partnerships developed with public and private organizations to promote the achievement of the goal of fair housing choice (including implementation of a locally-developed and HUD-approved New Horizons comprehensive fair housing plan);

(*4*) Contracting with private organizations, including private fair housing organization, where such support will bring about actions consistent with title VI and the Fair Housing Act, to address the impediments identified in the analysis described in paragraph (c)(2)(ii)(A) of this section;

(*5*) Activities which assist in remedying findings or determinations of unlawful segregation or other discrimination involving assisted housing within the unit of general local government's jurisdiction.

(*6*) Other actions consistent with law determined to be appropriate based upon the conclusions of the analysis.

(C) Where the unit of general local government's analysis did not identify impediments to fair housing choice, or actions that could be taken to address impediments, the unit of general local government provided educational materials and activities to the public on federal, State and local fair housing laws and procedures.

(d) *Labor standards.* Section 110 of the Act requires that all laborers and mechanics employed by contractors or subcontractors on construction work financed in whole or in part with assistance received under the Act shall be paid wages at rates not less than those prevailing on similar construction in the locality as determined by the Secretary of Labor in accordance with the Davis-Bacon Act, as amended (40 U.S.C 276a–276a–5). By reason of the foregoing requirement, the Contract Work Hours and Safety Standards Act (40 U.S.C. 327 *et seq.*) also applies. However, these requirements apply to the rehabilitation of residential property only if such property contains not less than 8 units.

(e) *Environmental Standards.* Section 104(g) expresses the intent that "the policies of the National Environmental Policy Act of 1969 and other provisions of law which further the purposes of such Act (as specified in regulations by the Secretary) * * * [be] most effectively implemented in connection with the expenditure of funds under" the Act. Such other provisions of law which further the purposes of the National Environmental Policy Act of 1969 are specified in regulations issued pursuant to section 104(g) of the Act and contained in 24 CFR part 58. The State shall assume such responsibilities for environmental review, decisionmaking, and action (and shall require the assumption of such responsibilities by units of general local government receiving CDBG funds from the State under this subpart) as shall be specified and required in regulations at 24 CFR part 58.

(f) *Lead-Based Paint Poisoning Prevention Act*—(1) *Prohibition against the use of lead-based paint.* Section 401(b) of the Lead-Based Paint Poisoning Prevention Act (42 U.S.C 4831(b)) (LPPPA) directs HUD to prohibit the use of lead-based paint in residential structures constructed or rehabilitated with Federal assistance in any form. Such prohibitions are contained in 24 CFR part 35, subpart B, and are applicable to residential structures constructed or rehabilitated with CDBG funds.

(2) *Notification of hazards of lead-based paint poisoning.* (i) HUD has promulgated requirements regarding notification to purchasers and tenants of HUD-associated housing constructed before 1978 of the hazards of lead-based paint poisoning at 24 CFR part 35, subpart A. This paragraph is promulgated pursuant to the authorization granted in 24 CFR 35.5(c) and supersedes, with respect to all housing to which it applies, the notification requirements prescribed by subpart A of 24 CFR part 35.

(ii) For properties constructed before 1978, applicants for rehabilitation assistance provided under this subpart and tenants or purchasers of properties owned by the unit of general local government or its subrecipient and acquired or rehabilitated with assistance under this subpart shall be notified:

(A) That the property may contain lead-based paint;

(B) Of the hazards of lead-based paint;

(C) Of the symptoms and treatment of lead-based paint poisoning;

(D) Of the precautions to be taken to avoid lead-based paint poisoning (including maintenance and removal techniques for eliminating such hazards);

(E) Of the advisability and availability of blood lead level screening for children under seven years of age; and

(F) That in the event lead-based paint is found on the property, appropriate abatement procedures may be undertaken.

(3) *Elimination of lead-based paint hazards.* This paragraph implements the provisions of Section 302 of the LPPPA, 42 U.S.C. 4822, by establishing procedures to eliminate as far as practicable the hazards due to the presence of paint which may contain lead and to which children under seven years of age may be exposed in projects assisted under this subpart. HUD has promulgated requirements regarding the elimination of lead-based paint hazards in HUD-associated housing at 24 CFR part 35, subpart C.

(i) *Applicability.* This paragraph applies to the rehabilitation of applicable surfaces in existing housing which is assisted under this part. The following activities assisted under the CDBG program are not covered by this paragraph:

(A) Emergency repairs (not including lead-based paint-related emergency repairs);

(B) Weatherization;

(C) Water or sewer hook-ups;

(D) Installation of security devices;

(E) Facilitation of tax exempt bond issuances which provide funds for rehabilitation;

(F) Other similar types of single-purpose programs that do not include physical repairs or remodeling of applicable surfaces (as defined in 24 CFR 35.22) of residential structures; and

(G) Any non-single purpose rehabilitation that does not involve applicable surfaces (as defined in 24 CFR 35.22) that does not exceed $3,000 per unit.

(ii) *Definitions*—(A) *Applicable surface.* All intact and nonintact interior and exterior painted surfaces of a residential structure.

(B) *Chewable surface.* All chewable protruding painted surfaces up to five feet from the floor or ground, which are readily accessible to children under seven years of age, e.g., protruding corners, window-sills and frames, doors and frames, and other protruding woodwork.

(C) *Defective paint surface.* Paint on applicable surfaces that is cracking, scaling, chipping, peeling or loose.

(D) *Elevated blood lead level or EBL.* Excessive absorption of lead, that is, a confirmed concentration of lead in whole blood of 25 mg/dl (micrograms of lead per deciliter of whole blood) or greater.

(E) *Lead-based paint surface.* A paint surface, whether or not defective, identified as having a lead content greater than or equal to 1 mg/cm ^{2}.

(iii) *Inspection and Testing*—(A) *Defective paint surfaces.* The unit of general local government shall inspect for defective paint surfaces in all units constructed before 1978 which are occupied by families with children under seven years of age and which are proposed for rehabilitation assistance. The inspection shall occur at the same time the project is being inspected for rehabilitation. Defective paint conditions will be specified for correction as part of the assisted rehabilitation.

(B) *Chewable surfaces.* The unit of general local government shall be required to test the lead content of chewable surfaces if the family in a unit constructed before 1978 and receiving rehabilitation assistance, includes a child under seven years of age with an identifiable EBL condition. Lead content shall be tested by using an X-ray fluorescence analyzer (XRF) or other method approved by HUD. Test readings of 1 mg/cm ^{2} or higher using an XRF shall be considered positive for presence of lead-based paint.

(C) *Abatement without testing.* In lieu of the procedures set forth in § 570.488(f)(3)(iii), in the case of a residential structure constructed before 1978, the unit of general local government may forego testing and abate all applicable surfaces in accordance with the methods set out in 24 CFR 35.24(b)(2)(ii).

(iv) *Abatement actions.* (A) For inspections performed under § 570.488(f)(3)(iii)(A) and where defective paint surfaces are found, treatment shall be provided to defective areas. Treatment shall be performed before final inspection and approval of the work.

(B) For testing performed under § 570.488(f)(iii)(3)(B) and where interior chewable surfaces are found to contain lead-based paint, all interior chewable surfaces in any affected room shall be treated. Where exterior chewable surfaces are found to contain lead-based paint, the entire exterior chewable surface shall be treated. Treatment shall be performed before final inspection and approval of the work.

(C) When weather prohibits repainting exterior surfaces before final inspection, the unit of general local government may, or may permit the owner to, abate the defective paint or chewable lead-based paint as required

by this section and agree to repaint by a specified date. A separate inspection is required.

(v) *Abatement methods.* At a minimum, treatment of the defective areas and chewable lead-based paint surfaces shall consist of covering or removal of the painted surface as described in 24 CFR 35.24(b)(2)(ii).

(vi) *Disposal of lead-based paint debris.* Lead-based paint and defective paint debris shall be disposed of in accordance with applicable Federal, State or local requirements. (See, e.g., 40 CFR parts 260 through 271.)

(vii) *Occupant protection.* The unit of general local government shall assure that the owner and any rehabilitation contractors shall take appropriate action to protect occupants from hazards associated with abatement procedures. Where necessary, these actions may include the temporary relocation of occupants during the abatement process.

(viii) *Records.* The unit of general local government shall keep a copy of each notification, inspection, and/or test report, required by this section for at least three years. The unit of general local government shall provide to the local Public Housing Authority a copy of these documents if the housing unit is or will be occupied by a section 8 assisted family.

(ix) *Compliance with other program requirements. Federal, State and local laws*—(A) *Other program requirements.* To the extent that assistance from any of the programs covered by this section is used in conjunction with other HUD program assistance which may have more or less stringent lead-based paint requirements, the more stringent requirements shall prevail.

(B) *HUD responsibility.* If HUD determines that a State or local law, ordinance, code or regulation provides for lead-based paint testing or hazard abatement in a manner which provides a level of protection from the hazards of lead-based paint poisoning at least comparable to that provided by the requirements of this section and that adherence to the requirements of this subpart would be duplicative or otherwise cause inefficiencies, HUD may deem compliance with such comparable State or local requirements and procedures to constitute compliance with this section. The HUD Field Office may make this determination initially, subject to monitoring review by, or appeal to, the Regional Office and Headquarters.

(C) *Unit of general local government responsibility.* Nothing in this section is intended to relieve any State or unit of general local government in the programs covered by this section of any responsibility for compliance with State or local laws, ordinances, codes or regulations governing lead-based paint testing or hazard abatement.

(g) *Actions to use minority and women's business firms.* Executive Orders 11625, 12432, and 12138 provide that the unit of general local government should administer its activities funded with assistance under this part in a manner to encourage use of minority and women's business enterprises. Such actions may include:

(1) Placing qualified small and minority businesses and women's business enterprises on solicitation lists;

(2) Assuring that small and minority businesses, and women's business enterprises are solicited whenever they are potential resources;

(3) Dividing total requirements, when economically feasible, into small tasks or quantities to permit maximum participation by small and minority business enterprises;

(4) Establishing delivery schedules, where the requirement permits, which encourage participation by small and minority business, and women's business enterprises;

(5) Using the services and assistance of the Small Business Administration and the Minority Business Development Agency of the Department of Commerce; and

(6) Requiring the prime contractor, if subcontracts are to be let, to take the affirmative steps listed in paragraphs (g)(1) through (5) of this section.

(h) *Employment and contracting opportunities.* (1) A unit of general local government shall comply with Executive Order 11246 as amended by Executive Order 12086, and the regulations issued pursuant thereto (41 CFR chapter 60) which provide that no person shall be discriminated against on the basis of race, color, religion, sex, or national origin in all phases of employment during the performance of Federal or federally assisted construction contracts. As specified in Executive Order 11246 and the implementing regulations, contractors and subcontractors on Federal or federally assisted construction contracts shall take affirmative action to ensure fair treatment in employment, upgrading, demotion or transfer, recruitment or recruitment advertising, layoff or termination, rates of pay, or other forms of compensation and selection for training and apprenticeship.

(2) Section 3 of the Housing and Urban Development Act of 1968 (12 U.S.C 1701u) requires, in connection with the planning and carrying out of any project assisted under the Act, that to the greatest extent feasible, opportunities for training and employment be given to low and moderate income persons residing within the unit of local government or the metropolitan area (or nonmetropolitan county) as determined by HUD in which the project is located, and that contracts for work in connection with the project be awarded to eligible business concerns which are located in, or owned in substantial part by persons residing in the same metropolitan area (or nonmetropolitan county) as the project. Units of general local government shall adopt appropriate procedures and requirements to assure good faith efforts toward compliance with the statutory directive. HUD regulations at 24 CFR part 135 are not applicable to activities assisted under this subpart but may be referred to as guidance indicative of the HUD's view of the statutory objectives in other contexts.

§ 570.489 Displacement, relocation, acquisition, and replacement of housing. [Reserved]

§ 570.490 Program administrative requirements.

(a) *Administrative and planning costs.* (1) The State is responsible for the administration of all CDBG funds. The State shall pay from its own resources all administrative and planning costs incurred by the State in carrying out its responsibilities under this subpart, except that the State may use CDBG funds to pay such costs in an amount not to exceed $100,000 plus 50 percent of such costs in excess of $100,000. The amount of CDBG funds used to pay such costs in excess of $100,000 shall not exceed 2 percent of the aggregate of the State's annual grant, program income received by units of general local government (whether retained by the unit of general local government or paid to the State) and funds reallocated by HUD to the State. The State will be considered to be in compliance with these requirements if expenditures for administration and planning during the period for the most recent performance and evaluation report required under § 570.492 did not exceed:

(i) $100,000 plus.

(ii) 50 percent of such expenditures in excess of $100,000, up to a maximum amount of 2 percent of the aggregate of the State's annual grant, program income received by units of general local government and funds reallocated by HUD to the State during such period.

(2) The State may not charge fees of any entity for processing or considering any application for CDBG funds, or for

carrying out its responsibilities under this subpart.

(3) The State and its funded units of general local government shall not expend for planning, management and administrative costs more than 20 percent of the aggregate amount of the annual grant, plus program income and funds reallocated by HUD to the State which are distributed during the time the final Statement for the annual grant is in effect. Administrative costs are those described at § 570.490(a)(1) for States, and for units of general local government those described at § 570.483 (g) and (h).

(b) *Reimbursement of pre-agreement costs.* The State may permit, in accordance with such procedures as the State may establish, a unit of local government to incur costs for CDBG activities before the establishment of a formal grant relationship between the State and the unit of general local government and to charge these pre-agreement costs to the grant, provided that the activities are eligible and undertaken in accordance with the requirements of this subpart and 24 CFR part 58 and that the State has given written authorization to the unit of general local government before the costs are incurred. The authorization by the State does not constitute a commitment to the unit of general local government to make a grant.

(c) *Consultants.* CDBG funds may be used to pay for consulting services for program planning, development of community development objectives, and other general professional guidance relating to program execution, subject to the following:

(1) *Employer-employee type of relationship.* No person providing consultant services in an employer-employee type of relationship shall receive more than a reasonable rate of compensation for personal services paid with CDBG funds. In no event, however, shall such compensation exceed the maximum daily rate of compensation of a GS–18 as established by Federal law. Such services shall be evidenced by written agreements between the parties which detail the responsibilities, standards and compensation.

(2) *Independent contractor relationship.* Consultant services provided under an independent contractor relationship are not subject to the GS–18 limitation.

(d) *Federal Grant Payments*—(1) *Payments.* The State shall be paid in advance in accordance with Treasury Circular 1075 (31 CFR Part 205). The State shall use procedures to minimize the time elapsing between the transfer of grant funds and disbursement of funds by the State to units of general local government. Units of general local government shall also use procedures to minimize the time elapsing between the transfer of funds by the State and disbursement for CDBG activities.

(2) *Interest on advances.* Interest earned by units of general local government on grant funds before disbursement of the funds for activities is not program income and must be returned to the Treasury, except that the unit of general local government may keep interest amounts up to $100 per year for administrative expenses. However, the State shall not be held accountable for interest earned on grants for which payments are made in accordance with paragraph (d)(1) of this section pending disbursement for CDBG activities.

(e) *Fiscal Controls and Accounting procedures.* (1) A State shall have fiscal and administrative requirements for expending and accounting for all funds received under this subpart. These requirements must be available for Federal inspection and must:

(i) Be sufficiently specific to ensure that funds received under this subpart are used in compliance with all applicable statutory and regulatory provisions:

(ii) Ensure that funds received under this subpart are only spent for reasonable and necessary costs of operating programs under this subpart; and

(iii) Ensure that funds received under this subpart are not used for general expenses required to carry out other responsibilities of State and local governments.

(2) A State may satisfy this requirement by:

(i) Using fiscal and administrative requirements applicable to the use of its own funds;

(ii) Adopting new fiscal and administrative requirements; or

(iii) Applying the provisions in 24 CFR part 85 "Uniform Administrative Requirements for Grants and Cooperative Agreements to State and Local Governments."

(g) *Program Income.* The State may permit the unit of general local government which receives or will receive program income to retain the program income, subject to the requirements of paragraph (g)(2) of this section, or the State may require the unit of general local government to pay the program income to the State. The State, however, must permit the unit of general local government to retain the program income if the program income will be used to continue the activity from which the program income was derived. The State will determine when an activity will be considered to be continued.

(1) *Program income paid to the State.* Program income that is paid to the State is treated as additional CDBG funds subject to the requirements of this subpart and must be distributed to units of general local government in accordance with the method of distribution in the State's final Statement. To the maximum extent feasible, program income shall be distributed before the State makes additional withdrawals from the Treasury, except as provided in paragraph (h) of this section.

(2) *Program income retained by a unit of general local government.* (i) Program income that is received and retained by the unit of general local government before closeout of the grant that generated the program income is treated as additional CDBG funds and is subject to all applicable requirements of this subpart.

(ii) Program income that is received and retained by the unit of general local government after closeout of the grant that generated the program income is not subject to the requirements of this subpart, except:

(A) If the unit of general local government has another ongoing CDBG grant from the State at the time of closeout, the program income continues to be subject to the requirements of this subpart as long as there is an ongoing grant, and

(B) If program income is used to continue the activity that generated the program income, the requirements of this subpart apply to the program income as long as the unit of general local government uses the program income to continue the activity.

(C) The State may extend the period of applicability of the requirements of this subpart.

(iii) The State shall require units of general local government, to the maximum extent feasible, to disburse program income that is subject to the requirements of this subpart before requesting additional funds from the State for activities, except as provided in paragraph (h) of this section.

(h) *Revolving funds.* (1) The State may permit units of general local government to establish revolving funds to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to carry out specific activities which, in turn, generate payments to the fund for use in carrying out such activities. These payments to the revolving fund are

program income and must be substantially disbursed from the revolving fund before additional grant funds are drawn from the Treasury for revolving fund activities. Such program income is not required to be disbursed for non-revolving fund activities.

(2) The State may establish a revolving fund to distribute funds to units of general local government to carry out specific, identified activities. A revolving fund, for this purpose, is a separate fund (with a set of accounts that are independent of other program accounts) established to fund grants to units of general local government to carry out specific activities which, in turn, generate payments to the fund for additional grants to units of general local government to carry out such activities. Program income in the revolving fund must be disbursed from the fund before additional grant funds are drawn from the Treasury for payments to units of general local government which could be funded from the revolving fund.

(3) A revolving fund established by either the State or unit of general local government shall not be directly funded or capitalized with grant funds.

(i) *Procurement.* When procuring property or services to be paid for in whole or in part with CDBG funds, the State shall follow its procurement policies and procedures. The State shall establish requirements for procurement policies and procedures for units of general local government, based on full and open competition. Methods of procurement (e.g., small purchase, sealed bids/formal advertising, competitive proposals, and noncompetitive proposals) and their applicability shall be specified by the State. Cost plus a percentage of cost and percentage of construction costs methods of contracting shall not be used. The policies and procedures shall also include standards of conduct governing employees engaged in the award or administration of contracts. (Other conflicts of interest are covered by § 570.490(i).) The State shall ensure that all purchase orders and contracts include any clauses required by Federal statutes, executive orders and implementing regulations.

(j) *Conflict of interest*—(1) *Applicability.* (i) In the procurement of supplies, equipment, construction, and services by the States, units of local general governments, and subrecipients, the conflict of interest provisions in paragraph (i) of this section shall apply.

(ii) In all cases not governed by paragraph (i) of this section, this paragraph shall apply. Such cases include the acquisition and disposition of real property and the provision of assistance with CDBG funds by the unit of general local government or its subrecipients, to individuals, businesses and other private entities.

(2) *Conflicts prohibited.* Except for eligible administrative or personnel costs, the general rule is that no persons described in paragraph (j)(3) of this section who exercise or have exercised any functions or responsibilities with respect to CDBG activities assisted under this subpart or who are in a position to participate in a decisionmaking process or gain inside information with regard to such activities, may obtain a personal or financial interest or benefit from the activity, or have an interest or benefit from the activity, or have an interest in any contract, subcontract or agreement with respect thereto, or the proceeds thereunder, either for themselves or those with whom they have family or business ties, during their tenure or for one year thereafter.

(3) *Persons covered.* The conflict of interest provisions for paragraph (j)(2) of this section apply to any person who is an employee, agent, consultant, officer, or elected official or appointed official of the State, or of a unit of general local government, or of any designated public agencies, or subrecipients which are receiving CDBG funds.

(4) *Exceptions: thresholds requirements.* Upon written request by the State, an exception to the provisions of paragraph (j)(2) of this section involving an employee, agent, consultant, officer, or elected official or appointed official of the State may be granted by HUD on a case-by-case basis. In all other cases, the State may grant such an exception upon written request of the unit of general local government provided the State shall fully document its determination in compliance with all requirements of this paragraph including the State's position with respect to each factor at paragraph (j)(5) of this section and such documentation shall be available for review by the public and by HUD. An exception may be granted after it is determined that such an exception will serve to further the purpose of the Act and the effective and efficient administration of the program or project of the State or unit of general local government as appropriate. An exception may be considered only after the State or unit of general local government, as appropriate, has provided the following:

(i) A disclosure of the nature of the conflict, accompanied by an assurance that there has been public disclosure of the conflict and a description of how the public disclosure was made; and

(ii) An opinion of the attorney for the State or the unit of general local government, as appropriate, that the interest for which the exception is sought would not violate State or local law.

(5) *Factors to be considered for exceptions.* In determining whether to grant a requested exception after the requirements of paragraph (j)(4) of this section have been satisfactorily met, the cumulative effect of the following factors, where applicable, shall be considered:

(i) Whether the exception would provide a significant cost benefit or an essential degree of expertise to the program or project which would otherwise not be available.

(ii) Whether an opportunity was provided for open competitive bidding or negotiation;

(iii) Whether the person affected is a member of a group or class of low or moderate income persons intended to be the beneficiaries of the assisted activity, and the exception will permit such person to receive generally the same interests or benefits as are being made available or provided to the group or class;

(iv) whether the affected person has withdrawn from his or her functions or responsibilities, or the decisionmaking process with respect to the specific assisted activity in question;

(v) Whether the interest or benefit was present before the affected person was in a position as described in paragraph (j)(3) of this section;

(vi) Whether undue hardship will result either to the State or the unit of general local government or the person affected when weighed against the public interest served by avoiding the prohibited conflict; and

(vii) Any other relevant considerations.

(k) *Closeout of grants to units of general local government.* The State shall establish requirements for timely closeout of grants to units of general local government and shall take action to ensure the timely closeout of such grants.

(l) *Change of Use of Real Property.* The standards described in this section apply to real property within the unit of general local government's control which was acquired or improved in whole or in part using CDBG funds in excess of $25,000. These standards shall apply from the date CDBG funds are first spent for the property until five years after closeout of the unit of general local government's grant.

(1) A unit of general local governments may not change the use or planned use of any such property (including the beneficiaries of such use) from that for which the acquisition or improvement was made unless the unit of general local government provides affected citizens with reasonable notice of and opportunity to comment on any proposed change, and either:

(i) The new use of such property qualifies as meeting one of the national objectives and is not a building for the general conduct of government; or

(ii) The requirements in paragraph (l)(2) of this section are met.

(2) If the unit of general local government determines, after consultation with affected citizens, that it is appropriate to change the use of the property to a use which does not qualify under paragraph (l)(1) of this section, it may retain or dispose of the property for the changed use if the unit of general local government's CDBG program is reimbursed or the State's CDBG program is reimbursed, at the discretion of the State. The reimbursement shall be in the amount of the current fair market value of the property, less any portion of the value attributable to expenditures of non-CDBG funds for acquisition of, and improvements to, the property, except that if the change in use occurs after grant closeout but within 5 years of such closeout, the unit of general local government shall make the reimbursement to the State's CDBG program account.

(3) If the change in use occurs 5 years or more after grant closeout, the change in use shall not be considered subject to any CDBG requirements.

(4) Following the reimbursement of the CDBG program in accordance with paragraph (l)(2) of this section, the property no longer will be subject to any CDBG requirements.

(m) *Accountability for real and personal property.* The State shall establish and implement requirements, consistent with State law and the purposes and requirements of this subpart (including paragraph (l) of this section) governing the use, management, and disposition of real and personal property acquired with CDBG funds.

(n) *Debarment and suspension.* As required by 24 CFR part 24, each CDBG participant shall require participants in lower tier covered transactions to include the certification in appendix B of part 24 (that neither it nor its principals is presently debarred, suspended, proposed for debarment, declared ineligible, or voluntarily excluded from participation from the covered transaction) in any proposal submitted in connection with the lower tier covered transactions. A participant may rely on the certification unless it knows the certification is erroneous.

(o) *Audits.* Audits of the State and units of general local government shall be conducted in accordance with 24 CFR part 44 which implements the Single Audit Act (31 U.S.C. 7501–07). States shall develop and administer an audits management system to ensure that audits of units of general local government are conducted in accordance with 24 CFR part 44. The audits management system must allow the State to:

(1) Determine if audits of units of general local government have met the requirements of part 44;

(2) Ensure that units of general local government are spending Federal funds in accordance with applicable laws and regulations;

(3) Take appropriate corrective actions within six months after receipt of the audit report containing findings of noncompliance with Federal laws and regulations;

(4) Evaluate the unit of general local government's audit to determine whether adjustment to the State's records is needed;

(5) Require each unit of general local government to permit independent auditors to have access to the records and financial Statements as necessary to comply with 24 CFR part 44;

(6) Accept or reject the finding made by the auditor;

(7) Evaluate the unit of general local government's actions to determine if they resolve the findings and ensure that such actions are taken;

(8) Require units of general local government to make the audits available to the public no later than 30 days after completion of the audit;

(9) Require the units of general local government to submit the audits to the State no later than 30 days after completion of the audit but no later than one year after the end of the audit period;

(10) Ensure that the audit report meets the content requirements of 24 CFR part 44; and

(11) Advise HUD of any illegal acts or irregularities, in addition to advising State and local law enforcement authorities. Illegal acts and irregularities include such matters as conflict of interest, falsification of records or reports and misappropriation of funds or other assets.

§ 570.491 Recordkeeping requirements.

(a) *State records.* The State shall establish and maintain such records as may be necessary to facilitate review and audit by HUD of the State's administration of CDBG funds under § 570.494. The content of records maintained by the State shall be as jointly agreed upon by HUD and the States and sufficient to enable HUD to make the determinations described at § 570.494. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program. The records shall also permit audit of the States in accordance with 24 CFR part 44.

(b) *Unit of general local government's records.* The State shall establish recordkeeping requirements for units of general local government receiving CDBG funds that are sufficient to facilitate reviews and audits of such units of general local government under § 570.493. For fair housing and equal opportunity purposes, and as applicable, such records shall include data on the racial, ethnic, and gender characteristics of persons who are applicants for, participants in, or beneficiaries of the program.

(c) *Access to records.* (1) Representatives of HUD, the Inspector General, and the General Accounting Office shall have access to all books, accounts, records, reports, files, and other papers, or property pertaining to the administration, receipt and use of CDBG funds and necessary to facilitate such reviews and audits.

(2) The State shall provide citizens with reasonable access to records regarding the past use of CDBG funds and ensure that units of general local government provide citizens with reasonable access to records regarding the past use of CDBG funds consistent with State or local requirements concerning the privacy of personal records.

(d) *Record Retention.* Records of the State and units of general local government, including supporting documentation, shall be retained for the greater of

(1) Three years from closeout of the grant to the State, or

(2) The period required by other applicable laws and regulations as described in § 570.488 and § 570.489.

§ 570.492 Performance and evaluation reports.

(a) *Content.* The State shall submit to HUD performance and evaluation reports. The content and format of the report shall be as jointly agreed upon by HUD and the States. The report must contain data on the racial, ethnic, and gender characteristics of persons who

are applicants for, participants in, or beneficiaries of the program. The performance and evaluation report shall contain a separate report for each annual grant until the entire annual grant, as well as program income and reallocated funds distributed under the final Statement covering the annual grant, have been expended by units of general local government and the State has completed reviews and audits of units of general local government pursuant to § 570.493 with respect to such funds.

(b) *Submission deadline.* Performance and evaluation reports shall be submitted annually in September.

(c) *Additional Information.* If HUD determines that the State's performance and evaluation report is incomplete or, the report, together with information gained from HUD's review, falls substantially short of providing an adequate basis for making the determinations required under § 570.494, HUD may require the State to provide necessary additional information.

(Approved by the Office of Management and Budget under OMB control number 3506–0053.)

§ 570.493 State's reviews and audits.

(a) The State shall make reviews and audits including on-site reviews, of units of general local government as may be necessary or appropriate to determine whether each unit of general local government:

(1) Has carried out CDBG assisted activities in a timely manner, and

(2) Has carried out CDBG assisted activities and its certifications in accordance with the requirements of the Act, other applicable laws and the requirements of this subpart; and

(3) Has a continuing capacity to carry out funded CDBG activities in a timely manner.

(b) In the case of noncompliance with these requirements, the State shall take such actions as may be appropriate to prevent a continuance of the deficiency, mitigate any adverse effects or consequences and prevent a recurrence. The State shall establish remedies for units of general local government noncompliance. The remedies may be exercised by the State after giving the unit of general local government notice of the State's determination of noncompliance and an opportunity to respond in accord with State law as may be applicable. The remedies may include:

(1) Temporarily withholding cash payments pending correction of the deficiency by the unit of general local government·

(2) Disallowing all or part of the cost of the activity or action not in compliance;

(3) Suspending or terminating the grant in whole or in part;

(4) Withholding further CDBG grants; or

(5) Taking other remedies that may be legally available.

§ 570.494 HUD's reviews and audits.

(a) *General.* At least on an annual basis, HUD shall make such reviews and audits as may be necessary or appropriate to determine:

(1) Whether the State has distributed CDBG funds to units of general local government in a timely manner in conformance to the method of distribution described in its final Statement;

(2) Whether the State has carried out its certifications in compliance with the requirements of the Act and this subpart and other applicable laws; and

(3) Whether the State has made reviews and audits of the units of general local government required by § 570.493.

(b) *Information considered.* In conducting performance reviews and audits, HUD will rely primarily on information obtained from the State's performance report, records maintained by the State, findings from on-site monitoring, audit reports, and the status of the State's unexpended grant funds. HUD may also consider relevant information on the State's performance gained from other sources, including litigation, citizens' comments, and other information provided by the State.

§ 570.495 Timely distribution of funds by States.

(a) States are encouraged to adopt and achieve a goal of placing 95 percent of funds under contract with units of general local government within 12 months of the State signing its grant agreement with HUD.

(b) HUD will review each State to determine if the State has distributed CDBG-funds in a timely manner. The State's distribution of CDBG funds is timely if:

(1) At least 75 percent of the State's annual grant (excluding State administration) is placed under contract with units of general local government within 12 months of the State signing its grant agreement with HUD; and

(2) All of the State's annual grant (excluding State administration) is placed under contract with units of general local government within 15 months of the State signing its grant agreement with HUD; and

(3) Recaptured funds and program income received by the State are expeditiously placed under contract with units of general local government.

(c) HUD may collect necessary information from States to determine if CDBG funds have been distributed in a timely manner.

§ 570.496 Reviews and audits response.

(a) If HUD's review and audit under § 570.494 results in a negative determination, or if HUD otherwise determines that a State or unit of general local government has failed to comply with any requirement of this subpart, the State will be given an opportunity to contest the finding and will be requested to submit a plan for corrective action. If the State is unsuccessful in contesting the validity of the finding to the satisfaction of HUD, or if the State's plan for corrective action is not satisfactory to HUD, HUD may take one or more of the following actions to prevent a continuation of the deficiency; mitigate, to the extent possible, the adverse effects or consequence of the deficiency; or prevent a recurrence of the deficiency:

(1) Issue a letter of warning that advises the State of the deficiency and puts the State on notice that additional action will be taken if the deficiency is not corrected or is repeated;

(2) Advise the State that additional information or assurances will be required before acceptance of one or more of the certifications required for the succeeding year grant;

(3) Advise the State to suspend or terminate disbursement of funds for a deficient activity or grant;

(4) Advise the State to reimburse its grant in any amounts improperly expended;

(5) Change the method of payment to the State from an advance basis to a reimbursement basis;

(6) Based on the State's current failure to comply with a requirement of this subpart which will affect the use of the succeeding year grant, condition the use of the succeeding fiscal years grant funds upon appropriate corrective action by the State. When the use of funds is conditioned, HUD shall specify the reasons for the conditions and the actions necessary to satisfy the conditions.

(b)(1) Whenever HUD determines that a State or unit of general local government which is a recipient of CDBG funds has failed to comply with § 570.488(b)(7) (nondiscrimination requirements), HUD shall notify the governor of the State or chief executive officer of the unit of general local

government of the noncompliance and shall request the governor or the chief executive officer to secure compliance. If within a reasonable time, not to exceed sixty days, the governor or chief executive officer fails or refuses to secure compliance, HUD may take the following action:

(i) Refer the matter to the Attorney General with a recommendation that an appropriate civil action be instituted;

(ii) Exercise the powers and functions provided by Title VI of the Civil Rights Act of 1964 (42 U.S.C. 2000d);

(iii) Exercise the powers and functions provided for in § 570.497; or

(iv) Take such other action as may be provided by law.

(2) When a matter is referred to the Attorney General pursuant to paragraph (b)(1)(i) of this section, or whenever HUD has reason to believe that a State or unit of general local government is engaged in a pattern or practice in violation of the provisions of § 570.488(b)(7), the Attorney General may bring a civil action in any appropriate United States district court for such relief as may be appropriate, including injunctive relief.

§ 570.497 Remedies for noncompliance; opportunity for hearing.

(a) *General.* Action pursuant to this section will be taken only after at least one of the corrective or remedial actions specified in § 570.496 has been taken, and only then if the State or unit of general local government has not made an appropriate and timely response.

(b) *Remedies.* (1) If HUD finds after reasonable notice and opportunity for hearing that a State or unit of general local government has failed to comply with any provision of this subpart, until HUD is satisfied that there is no longer failure to comply, HUD shall:

(i) Terminate payments to the State;

(ii) Reduce payments for current or future grants to the State by an amount equal to the amount of CDBG funds distributed or used without compliance with the requirements of this subpart;

(iii) Limit the availability of payments to the State to activities not affected by the failure to comply or to activities designed to overcome the failure to comply; or

(iv) Based on the State's failure to comply with a requirement of this subpart (other than the State's current failure to comply which will affect the use of the succeeding year grant), condition the use of the grant funds upon appropriate corrective action by the State specified by HUD.

(v) With respect to a CDBG grant awarded by the State to a unit of general local government, withhold, reduce, or withdraw the grant, require the State to withhold, reduce, or withdraw the grant, or take other action as appropriate, except that CDBG funds expended on eligible activities shall not be recaptured or deducted from future CDBG grants to such unit of general local government.

(2) HUD may on due notice suspend payments at any time after the issuance of a notice of opportunity for hearing pursuant to paragraph (d) of this section, pending such hearing and a final decision, to the extent HUD determines such action necessary to prevent a continuation of the noncompliance.

(c) In lieu of, or in addition to, the action authorized by paragraph (b) of this section, if HUD has reason to believe that the State or unit of general local government has failed to comply substantially with any provision of this subpart, HUD may:

(1) Refer the matter to the Attorney General of the United States with a recommendation that an appropriate civil action be instituted; and

(2) Upon such a referral, the Attorney General may bring a civil action in any United States district court having venue thereof for such relief as may be appropriate, including an action to recover the amount of the CDBG funds which was not expended in accordance with this subpart, or for mandatory or injunctive relief;

(d) *Proceedings.* When HUD proposes to take action pursuant to this section, the respondent in the proceedings will be the State. At the option of HUD, a unit of general local government may also be made a respondent. These procedures are to be followed before imposition of a sanction described in paragraph (b)(1) of this section:

(1) *Notice of opportunity for hearing.* HUD shall notify the respondent in writing of the proposed action and of the opportunity for a hearing. The notice shall be sent to the respondent by certified mail, return receipt requested. The notice shall specify:

(i) In a manner which is adequate to allow the respondent to prepare its response, the basis upon which HUD determined that the respondent failed to comply with a provision of this subpart;

(ii) That the hearing procedures are governed by these rules;

(iii) That the respondent has 14 days from receipt of the notice within which to notify HUD in writing of its request for a hearing and the name, address and telephone number of the person to whom any request for hearing is to be addressed;

(iv) The action which HUD proposes to take and that the authority for this action is § 570.497 of this subpart;

(v) That if the respondent fails to request a hearing within the time specified, HUD's determination that the respondent failed to comply with a provision of this subpart shall be final and HUD may proceed to take the proposed action.

(2) *Initiation of hearing.* The respondent shall be allowed 14 days from receipt of the notice within which to notify HUD in writing of its request for a hearing. If no request is received within the time specified, HUD's determination that the respondent failed to comply with a provision of this subpart shall be final and HUD may proceed to take the proposed action.

(3) *Administrative Law Judge.* Proceedings conducted under these rules shall be presided over by an Administrative Law Judge (ALJ), appointed as provided by section 11 of the Administrative Procedure Act (5 U.S.C. 3105). The case shall be referred to the ALJ by HUD at the time a hearing is requested. The ALJ shall promptly notify the parties of the time and place at which the hearing will be held. The ALJ shall conduct a fair and impartial hearing and take all action necessary to avoid delay in the disposition of proceedings and to maintain order. The ALJ shall have all powers necessary to those ends, including but not limited to the power:

(i) To administer oaths and affirmations;

(ii) To issue subpoenas as authorized by law;

(iii) To rule upon offers of proof and receive relevant evidence;

(iv) To order or limit discovery before the hearing as the interests of justice may require;

(v) To regulate the course of the hearing and the conduct of the parties and their counsel;

(vi) To hold conferences for the settlement or simplification of the issues by consent of the parties;

(vii) To consider and rule upon all procedural and other motions appropriate in adjudicative proceedings; and

(viii) To make and file initial determinations.

(4) *Ex parte communications.* An ex parte communication is any communication with an ALJ, direct or indirect, oral or written, concerning the merits or procedures of any pending proceeding which is made by a party in the absence of any other party. Ex parte communications are prohibited except where the purpose and content of the communication have been disclosed in advance or simultaneously to all parties, or the communication is a request for

information concerning the status of the case. Any ALJ who receives an ex parte communication which the ALJ knows or has reason to believe is unauthorized shall promptly place the communication, or its substance, in all files and shall furnish copies to all parties. Unauthorized ex parte communications shall not be taken into consideration in deciding any matter in issue.

(5) *The hearing.* All parties shall have the right to be represented at the hearing by counsel. The ALJ shall conduct the proceedings in an expeditious manner while allowing the parties to present all oral and written evidence which tends to support their respective positions, but the ALJ shall exclude irrelevant, immaterial or unduly repetitious evidence. HUD has the burden of proof in showing by a preponderance of evidence that the respondent failed to comply with a provision of this subpart. Each party shall be allowed to cross-examine adverse witnesses and to rebut and comment upon evidence presented by the other party. Hearings shall be open to the public. So far as the orderly conduct of the hearing permits, interested persons other than the parties may appear and participate in the hearing.

(6) *Transcripts.* Hearings shall be recorded and transcribed only by a reporter under the supervision of the ALJ. The original transcript shall be a part of the record and shall constitute the sole official transcript. Respondents and the public, at their own expense, may obtain copies of the transcript.

(7) *The ALJ's decisions.* At the conclusion of the hearing, the ALJ shall give the parties a reasonable opportunity to submit proposed findings and conclusions and supporting reasons therefor. Within 25 days after the conclusion of the hearing, the ALJ shall prepare a written decision which includes a Statement of findings and conclusions, and the reasons or basis therefor, on all the material issues of fact, law or discretion presented on the record and the appropriate sanction or denial thereof. The decision shall be based on consideration of the whole record or those parts thereof cited by a party and supported by and in accordance with the reliable, probative, and substantial evidence. A copy of the decision shall be furnished to the parties immediately by certified mail, return receipt requested, and shall include a notice that any requests for review by the Secretary must be made in writing to the Secretary within 30 days of the receipt of the decision.

(8) *Record.* The transcript of testimony and exhibits, together with the decision of the ALJ and all papers and requests filed in the proceeding, constitutes the exclusive record for decision and, on payment of its reasonable cost, shall be made available to the parties. After reaching his initial decision, the ALJ shall certify to the complete record and forward the record to the Secretary.

(9) *Review by the Secretary.* The decision by the ALJ shall constitute the final decision of HUD unless, within 30 days after the receipt of the decision, either the respondent or the Assistant Secretary for Community Planning and Development files an exception and request for review by the Secretary. The excepting party must transmit simultaneously to the Secretary and the other party the request for review and the bases of the party's exceptions to the findings of the ALJ. The other party shall be allowed 30 days from receipt of the exception to provide the Secretary and the excepting party with a written reply. The Secretary shall then review the record of the case, including the exceptions and the reply. On the basis of such review, the Secretary shall issue a written determination, including a Statement of the reasons or basis therefor, affirming, modifying or revoking the decision of the ALJ. The Secretary's decision shall be made and transmitted to the parties within 80 days after the decision of the ALJ was furnished to the parties.

(10) *Judicial review.* The respondent may seek judicial review of HUD's decision pursuant to section 111(c) of the Act.

§ 570.498 Reallocation of funds.

(a) Any funds that become available as a result of actions taken against a State under § 570.496 or § 570.497 will be reallocated to all States according to the formula of section 106(d) of the Act in the succeeding fiscal year.

(b) Any funds that become available as a result of actions under § 570.911 or § 570.913 against a nonentitled unit of general local government funded directly by HUD, or that become available as a result of a closeout of HUD administered Small City grants, are added to that State's allocation in the fiscal year that such funds become available.

(c) Any funds that become available as a result of actions by HUD under § 570.496 or § 570.497 against a unit of general local government funded by a State are added to that State's allocation in the fiscal year that such funds become available.

(d) Any funds which became available because a State fails to meet the submission requirements of § 570.486 shall be:

(1) Administered by HUD pursuant to subpart F of this part if the State has not administered the program in any previous fiscal year.

(2) Reallocated to all States in the succeeding fiscal year according to the formula of section 106(d) of the Act, if the State administered the program in any previous fiscal year.

Dated: December 14, 1990.

Anna Kondratas,

Assistant Secretary for Community Planning and Development.

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December 24, 1990

Part III

Department of Defense

Department of the Army

32 CFR Part 619

Program for Qualifying DOD Freight Motor Carriers; Final Rule

DEPARTMENT OF DEFENSE

Department of the Army

32 CFR Part 619

Program for Qualifying DOD Freight Motor Carriers

AGENCY: Military Traffic Management Command, DOD.

ACTION: Final rule.

SUMMARY: This final rule establishes the Program for DOD Freight Motor Carrier Qualification Program as 32 CFR part 619. Subject to certain exceptions, the DOD Freight Motor Carriers Qualification Program will apply to all freight motor carriers intending to participate in transportation of all freight administered by the Military Traffic Management Command's (MTMC) Directorate of Inland Traffic (except used household goods, hazardous, or secret materials, and sensitive weapons and munitions). This rule establishes the qualification data for carriers without and with rates on file. This rule also establishes the Basic Agreement between the Military Traffic Management Command and Motor Common Carriers for Approval to Transport General Commodities for the Department of Defense.

EFFECTIVE DATE: December 24, 1990.

FOR FURTHER INFORMATION CONTACT: Ms. Rose Sharpe or Mr. Rick Wirtz, Headquarters, Military Traffic Management Command, attn: MTIN, 5611 Columbia Pike, Falls Church, VA 22041–5050, (703) 756–1356.

SUPPLEMENTARY INFORMATION: Information contained in this rule was previously published in the **Federal Register**, 53 FR 17970, 54 FR 27667 and 55 FR 7361. HQMTMC has received Office of Management and Budget (OMB) approval to proceed with the new DOD Freight Motor Carrier Qualification Program. Carriers without rates on file as of the effective date of this rule will have to qualify prior to MTMC's acceptance of their service offers. Carriers with rates on file as of the effective date of this rule will be required to submit qualification data when requested by MTMC. All carriers will be required to meet the qualification standards within 2 years of the implementation of this program.

Executive Order 12291

This final rule has been reviewed under Executive Order 12291 and the Secretary of the Army has classified this action as nonmajor. The effect of the final rule on the economy will be less than $100 million.

Regulatory Flexibility Act

This final rule has been reviewed with regard to the requirements of the Regulatory Flexibility Act of 1980 and the Secretary of the Army has certified that this action does not have a significant impact on a substantial number of small entities.

Paperwork Reduction Act

This final rule has been approved by the Office of Management and Budget as required under the requirements of the Paperwork Reduction Act of 1980 (44 U.S.C. 3507).

List of Subjects in 32 CFR Part 619

Shipping, Motor vehicle, Safety, Trucks, Common carriers, Freight.

Accordingly, title 32 of the Code of Federal Regulations is amended by adding part 619 as follows:

PART 619—PROGRAM FOR QUALIFYING DOD FREIGHT MOTOR CARRIERS; QUALIFICATION CRITERIA

Authority: 49 U.S.C. 1801–1813, 2503, 2505, and 2509.

Subpart A—Qualification Criteria

§ 619.1 Introduction.

Carriers interested in qualifying or remaining qualified will submit data described in §§ 619.2 thru 619.6 to the appropriate area command (Bayonne, NJ or Oakland, CA) based on the location of the carrier's headquarters. The area command will schedule a meeting with the carrier, if necessary, to clarify any qualification elements and also receive guidance on how to do business with the Department of Defense. The area command will then evaluate the data to determine whether the carrier has the equipment, facilities, personnel and finances necessary to handle the carrier's proposed scope of operations. The area commands will then forward the application to HQMTMC for approval. If the carrier is approved and signs the agreement, HQMTMC will then accept (or in the case of existing carriers, continue to accept) tenders, tariffs or similar rate submissions. Carriers that are disapproved will be notified of the reasons for disapproval and may reapply for approval once the problems have been corrected.

§ 619.2 Safety ratings.

(a) Carrier will not have an "unsatisfactory" safety rating with the Federal Highway Administration, Department of Transportation, and if it is an interstate motor carrier, with the appropriate state agency.

(b) Carriers with "conditional" or "insufficient information" ratings may be used to transport DOD general commodities provided that such carriers certify in writing that they are not in full compliance with Department of Transportation safety requirements.

§ 619.3 Operating authorities.

Carriers will submit copies of all certificates authorizing operations as a common carrier (interstate and intrastate) needed to transport DOD traffic.

§ 619.4 Insurance—public liability and cargo.

(a) *Public liability.* Motor carriers will submit proof of their public liability insurance to MTMC on a certificate of insurance form issued by the insurance company. Expiration dates will not be reflected on the certificate, the policy must be continuous until cancelled. However, the deductible portion will be shown on the certificate. The insurance underwriter must have a policyholder's rating of "C" or better in Best's Insurance Guide. The certificate holder block of the form will indicate that HQMTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, attn: MT-INFF, will be notified, in writing, 30 days in advance of any change or cancellation. Self-Insurance will not be accepted. The public liability requirements are specified by 49 CFR 387.9 and are summarized as follows based on the commodities transported:

(1) Property (nonhazardous)	$750,000
(2) Oil, hazardous waste, materials and substances not in bulk	1,000,000

(b) *Cargo.* Motor carriers will be required to have their insurance company provide proof of cargo insurance to MTMC on a certificate of insurance form. Expiration dates will not be reflected on the certificate; the policy must be continuous until cancelled. However, the deductible portion will be shown on the certificate. The insurance underwriter must have a policyholder's rating of "C" or better in Best's Insurance Guide. The certificate holder block of the form will indicate that HQMTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, attn: MT-INFF, will be notified, in writing, 30

days in advance of any change or cancellation. DOD's minimum cargo insurance requirements are $150,000 for loss and damage of Government freight and/or $20,000 per vehicle transported (e.g., automobile transporters or vehicles in haulaway service) in the form of certificate(s) of insurance. Self-insurance will not be accepted.

§ 619.5 Financial records.

(a) Motor carriers must furnish financial statements certified by the company Chief Executive Officer, President or Owner. These financial statements must include company certified balance sheets and income statements for the last 3 taxable years. Motor carriers in existence less than 3 years, but more than 12 months, must provide company certified copies of all balance sheets and income statements from the date business was commenced. Carriers in business less than 12 months must provide a company certified balance sheet showing all assets and liabilities. Motor carriers must furnish financial data at MTMC's discretion when considered necessary to assure satisfactory performance and avoidance of motor carrier financial problems. This financial data includes, but is not limited to the following:

(1) Company certified financial statements.

(2) CPA review (including footnotes) of financial statements.

(3) CPA audit and opinion (including footnotes) of financial statements.

(b) All carriers must also state the extent of their financial interests in other transportation companies or their affiliation with any person or firm holding interests in other transportation companies to include:

(1) Majority or minority ownership.

(2) Familiar relationships.

(3) Voting of securities.

(4) Common directors, officers and/or stockholders.

(5) Voting trusts.

(6) Holding trusts.

(7) Associated companies.

(8) Contract or department relationships.

(c) This information will be used to determine if common financial and administrative control exists with other companies, or if individuals or associated companies are affiliated with those who have been debarred by the Government.

§ 619.6 Information.

Carriers will provide HQMTMC the following information:

(a) A listing of company's officers with their title.

(b) A listing of the company's owners and the percentage of ownership of each.

(c) Company background and history, including the year the company was formed.

(d) A list, by type and quantity, of all owned and/or leased equipment. MTMC will not approve any motor carrier that does not own and/or have permanent leases for equipment.

(e) The number of personnel employed, to include company drivers and number of drivers under lease. A motor carrier must be able to show it has a minimum personnel force in order to operate effectively.

(f) A list of all terminal locations including the street address and telephone numbers, and descriptions of the terminal facilities.

(g) Three reference letters from shippers served during the previous 12 months.

(h) Proposed services by type of service, traffic lane, or geographical area. MTMC will review equipment inventories and permanent lease agreements in relationship to proposed service. In those instances where a carrier's equipment inventory indicates they cannot provide the proposed service, MTMC will request a meeting with the carrier to review proposed service.

(i) Copies of driver hiring, screening, and training procedures.

(j) Disadvantaged (minority) and women-owned business certification (if applicable).

§ 619.7 Performance bond.

Carriers must submit a letter of intent to file a bond from a surety company with initial application. Upon MTMC approval, motor carriers will provide HQMTMC with a Performance Bond. The bond must be issued by a surety company listed in the Fiscal Service, Treasury Department Circular No. 570. The sum of the bond shall be no less than $100,000. The bond must be continuous until cancelled. HQMTMC will be notified, in writing, 30 days in advance of any change or cancellation. The Performance Bond secures performance and fulfillment of the carrier obligation. It will cover default, abandoned shipments, inability to perform, bankruptcy and overcharges.

§ 619.8 Basic agreement.

Carriers meeting the qualification requirements of §§ 619.1 thru 619.7 will be required to sign the Basic Agreement in the appendix to this part.

Appendix to Part 619—Basic Agreement Between the Military Traffic Management Command and Motor Common Carriers for Approval to Transport General Commodities for the Department of Defense

1. The undersigned, who is duly authorized and empowered to act on behalf of _____, thereinafter called the carrier, as a prerequisite for approval to transport general commodities for the account of the Department of Defense (DOD) and the Military Traffic Management Command (MTMC), hereinafter called the Government, agrees to comply with all requirements and conditions as set forth in this Agreement. This Agreement governs the transportation of all DOD freight administered by the Directorate of Inland Traffic, MTMC (except used household goods, hazardous or secret materials, and sensitive weapons and munitions). Noncompliance by the carrier with any provision of this Agreement may result in MTMC taking action against the carrier under the Carrier Performance Program, governed by MTMCR 15–1, and terminating approval to participate in this traffic. If the carrier's approval is terminated, the carrier may be disqualified from further participation in any DOD freight traffic.

2. Approval and Revocation

a. Carrier understands that its initial approval and retention of approval are contingent upon establishing and maintaining, to MTMC's satisfaction, sufficient resources to support its proposed scope of operations and services. Sufficient resources include the equipment, personnel, facilities, and finances to handle the traffic anticipated by DOD/MTMC under the carrier's proposed scope of operations in accordance with the service requirements of the shipper.

b. The carrier understands that MTMC may revoke approval at any time upon discovery of grounds for ineligibility or disqualification. The carrier further understands that it is not authorized to submit tenders for shipments requiring a Transportation Protective Service until it has served DOD in an approved status for 12 continuous months.

c. In addition to the initial evaluation, the carrier agrees that it will cooperate with MTMC follow-up evaluations at any time subsequent to signing this agreement to confirm continued eligibility.

d. The carrier certifies that neither the owners, company, nor any affiliation or subsidiary thereof are currently debarred or suspended from doing business with DOD.

3. Lawful Performance

Transportation for the DOD will be performed in accordance with all applicable Federal, State, municipal, and other local laws and regulations. No fines, charges, or assessments for overload vehicles or other violations of applicable laws and regulations will be passed to or be paid by any agency of the Federal Government.

4. Operating Authority

Carrier will maintain valid motor common carrier operating certificates for its scope of operations. Any carrier found to be, in fact,

involved in the brokerage (as defined by the ICC), of DOD freight traffic will have its approval revoked.

5. Insurance

a. Minimum public liability insurance requirements are prescribed in 49 Code of Federal Regulations (CFR) § 387.9. Carriers will ensure that the Interstate Commerce Commission is provided proof of their public liability insurance, in the form of a BMC 91 or 91–X, or MCS 90, in accordance with sections 29 and 30 of the Motor Carrier Act of 1980. Further, the motor carrier will provide MTMC with a certificate of insurance form. The certificate holder block of the form will indicate that HQMTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, attn: MT–INFF, will be notified in writing, 30 days in advance of any change on the certificate. Policy must be continuous until cancelled. However, the deductible portion will be shown on the certificate. The insurance underwriter must have a policyholder's rating of "C" or better in Best's Insurance Guide, or listed in the Fiscal Service Treasury Department Circular 570, Listing of Surety Companies. Self-Insurance will not be accepted.

b. The carrier will also file with MTMC proof of:

(1) *Public liability insurance.* Interstate carriers—$750,000 per vehicle for property (excluding hazardous) and $1,000,000 per vehicle for oil, hazardous wastes, hazardous materials and hazardous substance defined in 40 Code of Federal Regulations (CFR) § 171.8 and listed in 49 CFR subpart B, § 172.101.

(2) *Intrastate carriers.* Public Liability Insurance shall be that as required by the state, except that for deregulated states, public liability shall be the same as that required of interstate carriers.

(3) *Cargo insurance.* Cargo insurance in the minimum amount of $150,000 for loss and damage of Government freight per vehicle and/or $20,000 per vehicle transported (e.g., automobile transporters or vehicles in haulaway/driveway service) must be maintained.

c. The insurance, carried in the name of the carrier, will be in force at all times while this Agreement is in effect or until such time as the carrier cancels all tenders. The carrier will ensure that the policies include a provision requiring the insurer to notify HQMTMC prior to any performance of service by the carrier. Changes, renewals and cancellation notices must also be sent to HQMTMC, 5611 Columbia Pike, Falls Church, Virginia 22041–5050, attn: MT–INFF. Self-Insurance will not be accepted. *This requirement applies to both interstate and intrastate carriers* Carrier's insurance policy(s) must cover all equipment used to transport DOD freight

6 Performance Bond

Carriers will provide HQMTMC with a Performance Bond at no cost to the Government The bond secures performance and fulfillment of the carrier obligation It will cover default, abandoned shipments inability to perform bankruptcy and reprocurement costs The bond must be issued by a surety company listed in the Fiscal Service, Treasury Department Circular No. 570. The sum of the bond shall be no less than $100,000. The bond must be completed on the form provided by HQMTMC. The bond will be continuous until cancelled. HQMTMC will be notified, in writing, 30 days in advance of any change or cancellation. A letter of intent by the surety company is required with the initial application. Upon MTMC approval, carrier will submit the performance bond before the Tender of Service will be accepted.

7. Safety

a. Carrier will not have an "unsatisfactory" safety rating with the Federal Highway Administration, Department of Transportation, and, if it is an intrastate motor carrier, with the appropriate state agency. The carrier further agrees to allow unannounced safety inspections of its facilities, terminals, equipment, employees, operations, and procedures by DOD civilian, military, or contract employees. These inspections may include transit surveillance of vehicles and drivers. Carrier will provide evidence of an active driver safety training and evaluation program that fulfills the requirements set forth at 49 CFR Parts 390 thru 396. Inspection of carrier equipment, driver's records, route plans, and inspection reports will be allowed during pickup and delivery of shipments and in coordination with police or other authorities while in transit. Upon request, the carrier agrees to furnish sufficient information to permit MTMC to verify or inspect carrier and driver records.

b. The carrier will have, in place, a company-wide management program. Carrier safety programs will comply with applicable Federal, State and local statutes or requirements. Safety programs at the company wide or terminal level may be subject to evaluation by a DOD representative.

c. The carrier will notify the consignor and consignee named by the Government Bill of Lading (GBL) or Commercial Bill of Lading (CBL) of cargo loss, damage, or unusual delay. Information reported will include origin/destination, GBL/CBL number, shipping paper information, time and place of occurrence, and other pertinent accident details. When requested, carrier will furnish MTMC a copy of accident reports submitted to Department of Transportation on Form MCS 50–T (Property).

8. Driver Requirements

Any driver used by carriers to transport DOD freight must possess a valid driver's license issued by his or her state domicile Drivers must have, at a minimum, 1 year of experience driving equipment similar to that used to transport DOD freight, or have proof of graduation from an accredited motor carrier driving school

9 Equipment

The carrier is prohibited from using trip leased equipment or drivers, except upon prior approval from MTMC. *Leases of less than 30 days* are considered trip leases In order to triplease, a carrier must apply for approval under MTMC s triplease program

10. Shipment

The carrier agrees to provide, at no additional cost to the government, the status of any shipment within 24 hours after an inquiry is made. Further, the carrier will not divulge any information to unauthorized persons concerning the nature and movement of any DOD shipment.

11. Documentation

a. Carrier agrees to accept GBLs and CBLs on which freight charges will be paid by the Government, and be bound by all terms and conditions stated on SF 1103, Government Bill of Lading, regardless of the type of bill of lading tendered.

b. The carrier will comply with the documentation prelodge procedures in effect at Military Ocean Terminals when cargo is consigned for further movement overseas. (Prelodging is the submission of advance shipment documents which identifies the shipment to the Military Ocean Terminal prior to delivery of the cargo at the terminal.) Instructions will be provided by the consignor to furnish certain data at least 24 hours in advance of cargo delivery to the terminal.

12. Loss or Damage

The carrier will be liable for loss or damage to cargo in accordance with the provisions of 49 U.S.C. 11707 (the Carmack Amendment to the Interstate Commerce Act). Carrier agrees to promptly settle uncontested claims for loss or damage.

13. Standard Tender of Service

a. The carrier will comply with the preparation and filing instructions and applicable freight traffic rules publications issued by MTMC. Carrier understands that MTMC will reject tenders not in compliance with these instructions.

b. Carrier will provide a street address where the company office is located in lieu of a post office box number. Carrier will provide the address prior to or in conjunction with submission of any tenders or other rate schedules. The carrier will also advise MTMC of any change in address prior to the effective date of the change. Failure to do so is grounds to discontinue use of the carrier.

c. Carrier understands that tenders inadvertently accepted and distributed for use and not in compliance with this agreement, the provisions contained in the Standard Tender of Freight Services (MT Form 364–R), or the applicable MTMC Freight Traffic Rules Publication, and supplements thereof, will be subject to immediate removal or nonuse until corrections are made. The issuing carrier will be advised when tenders are removed under these circumstances

14. Rates

Carrier agrees to transport Government shipments at its lowest applicable rate whether or not the rate tender is referenced on the GBL/CBL.

15. Carrier Performance

Carrier's equipment, performance and standards of service will conform with its obligations under Federal, State and local law and regulation as well as with the guidelines found in the Defense Traffic

Management Regulation (DTMR) and this Agreement. The carrier fully understands its obligation to remain current in its knowledge of service standards. The carrier accepts the Government's right to revoke approval, declare ineligible, nonuse, or disqualify the carrier for unsatisfactory service subsequent to approval or for any other operating deficiency, or for noncompliance with terms of the Agreement or terms of negotiated agreements, tariffs, tenders, bills of lading or similar arrangements determine the relationship of the parties, or for the publication or assessment of unreasonable rates, charges, rules, descriptions, classifications, practices, or other unreasonable rates, charges, rules, descriptions, classifications, practices, or other unreasonable provisions of tariffs/tenders. Rules governing the carrier Performance Program are found in MTMCR 15–1, and Army Regulation 55–355, Defense Traffic Management Regulation. If a carrier is removed or disqualifed for 6 months or more, it will have to be requalified.

16. General Provisions

The carrier agrees to have a valid Standard Carrier Alpha Code (SAC) and use it on all DOD billing documents, and correspondence pertaining to shipment of freight. If different operating divisions of a carrier desire to file tenders with the DOD, the carrier agrees to maintain a separate agreement and SCAC for each division.

17. Terms of the Agreement

a. The terms of this Agreement will be applicable to each shipment.

b. This Agreement shall be effective from the date of acknowledgment until terminated. Termination is effective upon receipt of writing notice by either party.

c. Nothing in this Agreement will be construed as a guarantee by the Government of any particular volume of traffic.

d. The carrier will immediately notify MTMC of any changes in ownership, in affiliations, executive officers, and/or board members, and carrier name.

18. Additional Specialized Requirements

The terms of this Agreement will not prevent different or additional requirements with respect to negotiated agreements or added requirements for any other types of service and/or commodities.

19. Inquiries

Inquiries may be referred to: Commander, Military Traffic Management Command, Attention: MT–INFF, 5611 Columbia Pike, Falls Church, VA 22041–5050.

20. Carrier Acknowledgment and Acceptance

The certifying carrier official will ensure all company officials and employees are familiar with the requirements of this Agreement and are in full compliance with the applicable provisions contained herein. Any information found to be falsely represented in the Motor Carrier Qualification Form, the attachments, or during the qualification procedures shall be grounds for automatic cancellation of this agreement and immediate nonuse of the carrier, the affiliated companies, division and entities.

I, *(TYPED NAME AND TITLE OF CARRIER OFFICIAL*, understand the requirements of this agreement and on behalf of *(TYPED NAME OF CARRIER*, agree to comply with the terms and conditions contained herein.

Name of carrier _____

Signature of official _____

Date _____

Carrier address _____

_____

_____

Telephone No. (_____) _____

24 hour emergency number: (_____) _____

SCAC _____

Interstate operating authority certificate number—MC _____

Interstate operating authority _____

Certificate number(s) (Include Issuing State e.g., PA—12345) _____

_____

_____

_____

Military Traffic Management Command Acknowledgment/Acceptance

Signature _____

Title _____

Date _____

Kenneth L. Denton,

Alternate Army Federal Register Liaison Officer.

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Federal Register

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INFORMATION AND ASSISTANCE

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Note: The list of Public Laws for the second session of the 101st Congress has been completed and will resume when bills are enacted into law during the first session of the 102d Congress, which convenes on January 3, 1991.

A cumulative list of Public Laws for the second session was published in Part II of the **Federal Register** on December 10, 1990.

CFR CHECKLIST

This checklist, prepared by the Office of the Federal Register, is published weekly. It is arranged in the order of CFR titles, prices, and revision dates.

An asterisk (*) precedes each entry that has been issued since last week and which is now available for sale at the Government Printing Office.

A checklist of current CFR volumes comprising a complete CFR set, also appears in the latest issue of the LSA (List of CFR Sections Affected), which is revised monthly.

The annual rate for subscription to all revised volumes is $620.00 domestic, $155.00 additional for foreign mailing.

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[5] The July 1, 1985 edition of 32 CFR Parts 1–189 contains a note only for Parts 1–39 inclusive. For the full text of the Defense Acquisition Regulations in Parts 1–39, consult the three CFR volumes issued as of July 1, 1984, containing those parts.

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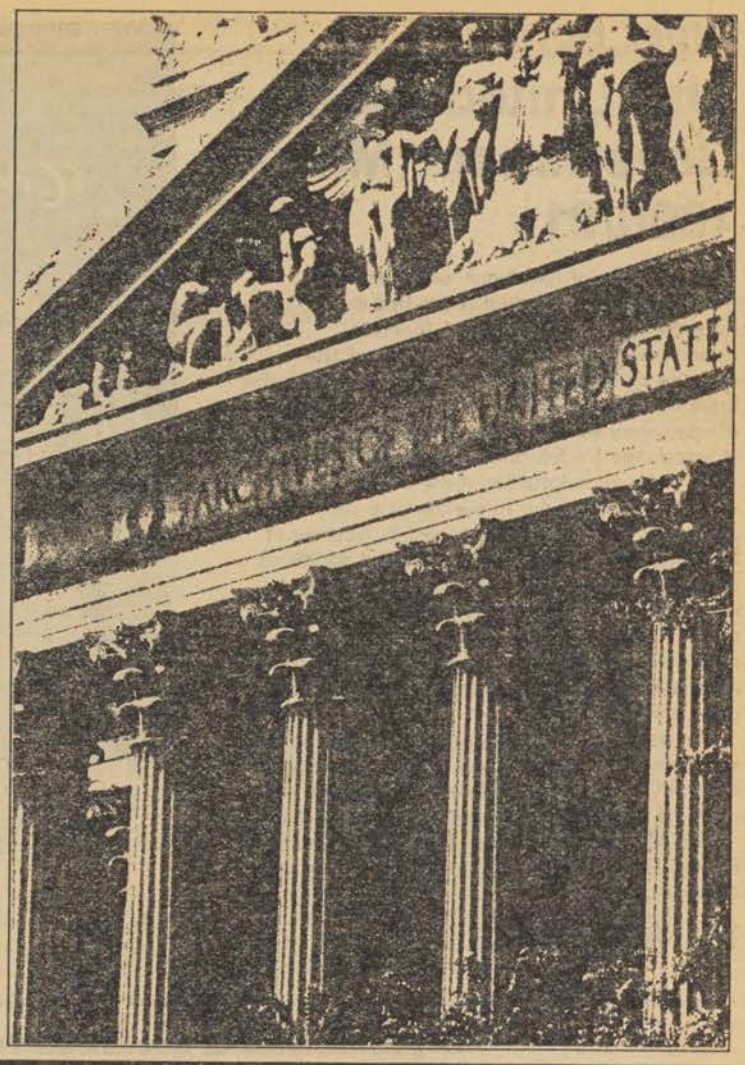

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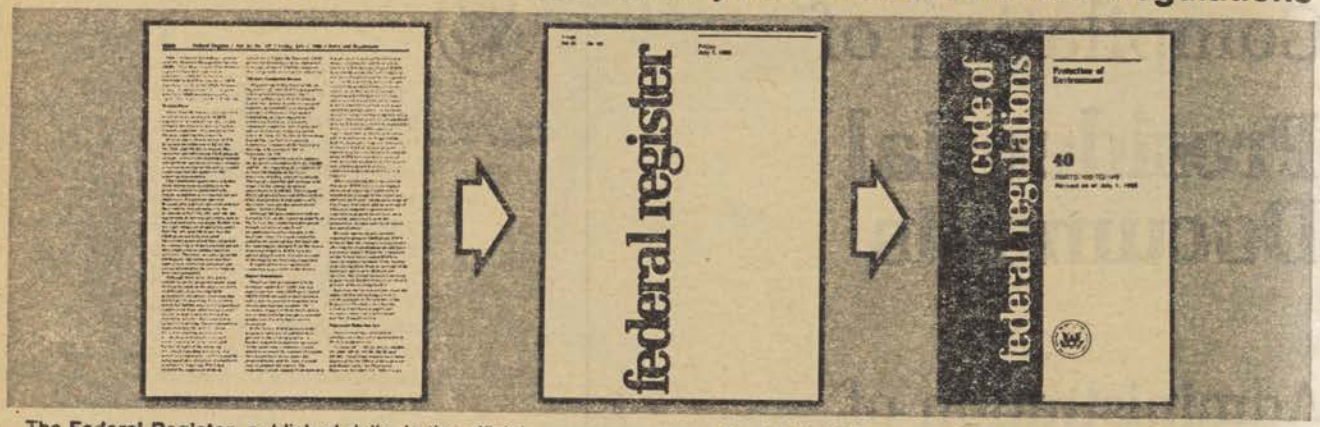

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